



UNODC

United Nations Office on Drugs and Crime

**COLOMBO COMMENTARY ON
THE JAKARTA STATEMENT
ON PRINCIPLES FOR
ANTI-CORRUPTION
AGENCIES**

UNITED NATIONS OFFICE ON DRUGS AND CRIME
Vienna

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UNITED NATIONS
Vienna, 2020



Preface

The United Nations Convention against Corruption is now almost universally ratified. The Convention requires States parties to ensure the existence of anti-corruption bodies with the necessary independence to prevent and combat corruption effectively. In 2012, anti-corruption agencies (ACAs) from around the world developed the Jakarta Statement on Principles for Anti-Corruption Agencies with support from the United Nations Development Programme (UNDP) and the United Nations Office on Drugs and Crime (UNODC). The Jakarta Principles provided a useful set of benchmarks for the establishment of ACAs, but feedback over the years has suggested that they needed more elaboration. At the seventh session of the Conference of the States Parties to the Convention, in November 2017, States parties requested that further guidance be developed by UNODC to support the fulfilment of their international obligations.

To provide such guidance to States parties, UNODC, in partnership with UNDP and the Sri Lankan Commission to Investigate Allegations of Bribery or Corruption, held an expert group meeting on this topic in Colombo from 25 to 27 July 2018. The meeting brought together more than 30 international experts, including representatives of ACAs from around the world. At the meeting, experts discussed a draft of the Colombo Commentary on the Jakarta Statement on Principles for Anti-Corruption Agencies and shared their experiences and lessons learned in practice. Prior to the meeting, UNODC had also circulated a survey to gather experiences from ACAs worldwide. The present publication brings together those experiences, supported by a review of relevant laws, policy documents and publications, to assist policymakers and decision makers in their efforts to strengthen national frameworks to enable the necessary independence of ACAs.

The Colombo Commentary does not provide a comprehensive overview of the experiences of ACAs globally. Rather, it provides a snapshot of experiences that demonstrate how the Jakarta Principles are implemented in practice. The Commentary is a living document that can evolve over time as more experience is gained. It aims to inspire and assist States parties and ACAs in ensuring that national anti-corruption frameworks are developed and strengthened in line with the requirements of the Convention.

The independence of ACAs is critical to the success of anti-corruption strategies around the world, as such agencies are key actors mandated to support States parties

in their efforts to prevent and combat corruption. We hope that the Colombo Commentary will provide useful food for thought for all stakeholders in order to ensure that ACAs are adequately protected against the backlash that often characterizes the successful fight against corruption. States parties to the Convention have an interest in bolstering their ACAs so that they can adequately implement preventive measures and achieve the law enforcement objectives entrusted to them.

As more and more people take to the streets demanding justice and an end to corruption, the international community needs to ensure – in the interest of peace and security – that appropriate national mechanisms are established in response to those demands. At UNODC, we continue to stand ready to assist States parties in designing adequate legal frameworks in line with the Convention, using all available guidance. In this regard, the Colombo Commentary adds to our toolbox in the fight against corruption.

I would like to express my gratitude to Sarath Jayamanne, Director General of the Sri Lankan Commission to Investigate Allegations of Bribery or Corruption, for his support for this publication and for hosting the expert group in Colombo. I would also like to thank Laode M. Syarif, Commissioner of the Corruption Eradication Commission of Indonesia, for his tireless efforts in promoting the Jakarta Principles. UNODC is also grateful to the Government of Norway for providing funding to the Corruption and Economic Crime Branch for this publication.

Furthermore, we are most grateful to all the colleagues and experts who commented on the draft commentary, either at the meeting in Sri Lanka or in writing afterwards, notably: Abu Kassim bin Mohamed (Malaysia), Ady Macauley (Sierra Leone), Alison Matthews (Transparency International), Alma Sedlar (Slovenia), Anele Ncube (African Development Bank), Anga Timilsina (UNDP), Asoka Obeyesekere (Transparency International Sri Lanka), Candice Welsch (UNODC), Charity Nchimunya (African Union Advisory Board on Corruption), Chawki Tabib (Tunisia), Constantine Palicarsky (UNODC), Diana Zubko (UNDP), Dirk Harrison (Jamaica), Dorothee Gottwald (UNODC), Emmanuel Farhat (France), Francesca Recanatini (World Bank), Francesco Checchi (UNODC), Gabriel Kuris (United States of America), Guglielmo Castaldo (UNODC), Ho King-yeung Ken (Hong Kong, China), Ibrahim Magu (Nigeria), Iftekhar Zaman (Transparency International Bangladesh), Irakli Kotetishvili (UNDP), Isireli Tagicaki (Fiji), Jean-Louis Andriamifidy (Madagascar), Julia Pilgrim (UNODC), Kari Ann Rotkin (UNODC), Maheshi Herat (Transparency International Sri Lanka), María Elsa Fuentes Montenegro (Peru), Miranti Martin (Indonesia), Moumouni Guindo (Mali), Muaviz Rasheed (Maldives), Muhammad Salim Sundar (Malaysia), Natalia Soebago (Transparency International Indonesia), Navin Beekarry (Mauritius), Oleksandr Seryogin (Ukraine), Putri Rahayu Wijayanti (Indonesia), Roman Daraga (Ukraine), Ronan O’Laoire (UNODC), Rukshana Nanayakkara (Transparency International), Sofie Arjon Schütte (U4 Anti-Corruption Resource Centre), Susana Silva Hasembank (Peru), Tatiana Chelli (UNODC), Tim Steele (UNODC), Verena Zoppei (German Agency for International Cooperation) and Zorana Markovic (UNODC).

Finally, I wish to thank Charmaine Rodrigues for authoring the Colombo Commentary, as well as Samuel De Jaegere (UNODC), who worked closely with the author on the development and editing of the Commentary.

We hope the Colombo Commentary will be a useful resource in your endeavours to prevent and combat corruption effectively in your respective countries, and I encourage you to make active use of this publication.

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Introduction

CONTEXT

1. In September 2015, Member States adopted the 2030 Agenda for Sustainable Development to guide national and global development efforts over the following 15 years. The 2030 Agenda specifically recognizes the need to build peaceful, just and inclusive societies that provide equal access to justice and that are based on respect for human rights, on effective rule of law and good governance at all levels and on transparent, effective and accountable institutions. Corruption, poor governance and illicit financial flows are all specifically highlighted in the 2030 Agenda as threats to achieving those critical development aims.

2. The 2030 Agenda comprises 17 Sustainable Development Goals and 169 targets, some of which are specifically designed to tackle corruption and ensure more accountable institutions. Target 16.5 calls upon Member States to substantially reduce corruption and bribery in all their forms, target 16.6 urges Member States to develop effective, accountable and transparent institutions at all levels and target 16.10 calls for Member States to ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements. The full and effective implementation of the United Nations Convention against Corruption, which highlights the critical importance of prevention, criminalization, law enforcement, international cooperation and asset recovery in tackling corruption, will also help to ensure that those targets are achieved.

SCOPE

3. Under the Convention, States parties are obliged to enact strong legal, institutional and policy frameworks to tackle corruption. States parties are also called upon to ensure that specific bodies are given mandates to prevent corruption, including through coordinated efforts and awareness-raising (art. 6), and to combat corruption through law enforcement (art. 36). Today, there are more than 150 anti-corruption bodies around the world that could be classified as specialized anti-corruption agencies (ACAs) performing the functions identified in the Convention.¹ Each State

¹Samuel De Jaegere, “Principles for anti-corruption agencies: a game changer”, *Jindal Journal of Public Policy*, vol. 1, No. 1 (August 2012), pp. 79–80.

party to the Convention is required to mandate at least one public body with preventing and combating corruption. Most countries have multiple such agencies.

4. The large number of bodies categorized as ACAs reflects the fact that the Convention and regional anti-corruption treaties² and standards do not propose a single “best” model for such bodies. The Convention focuses on function rather than form when prescribing how States can establish ACAs within national anti-corruption frameworks (see principle 1 for more information). The purpose of the present Commentary is to provide guidance to Member States and existing ACAs regarding good practices to ensure that ACAs have adequate mandates and are equipped with the necessary powers, independence and resources to contribute effectively to the achievement of the Sustainable Development Goals, as well as to fully implement the Convention and fulfil the relevant international and regional obligations.

²Regional treaties include the Inter-American Convention against Corruption (1996), the Criminal Law Convention on Corruption (1999), the Economic Community of West African States Protocol on the Fight against Corruption (2001), the Southern African Development Community Protocol against Corruption (2001), the African Union Convention on Preventing and Combating Corruption (2003) and the Arab Anti-Corruption Convention (2010).



Background

ANTI-CORRUPTION AGENCIES

5. Originating in South-East Asia in the 1950s, ACAs spread across the world in the following decades. In the second half of the twentieth century, more than 50 countries established such institutions. ACAs were increasingly recognized as an essential instrument to tackle corruption effectively, even in the absence of a global treaty. In the Inter-American Convention against Corruption, adopted in 1996, States parties agreed to consider creating, maintaining and strengthening oversight bodies with a view to implementing modern mechanisms for preventing, detecting, punishing and eradicating corrupt acts. In that same year, the first Conference for Law Enforcement Officers Specialized in the Fight against Corruption stated in its conclusions and recommendations that the prevention, investigation and prosecution of corruption “need to be approached on numerous levels, using specific knowledge and skills from a variety of fields (law, finance, economics, accounting, civil engineers, etc.). Each State should therefore have experts specialised in the fight against corruption. They should be of a sufficient number and be given appropriate material resources.”³

6. Subsequently, in Europe, the Twenty Guiding Principles for the Fight against Corruption were adopted in 1997 and largely reflected in the Criminal Law Convention on Corruption adopted by the Council of Europe in 1999. Those European standards were the first to explicitly highlight that ACAs must have political, legal and operational independence.⁴ Under article 20 of the Criminal Law Convention on Corruption, each State party shall adopt such measures as may be necessary to ensure that persons or entities are specialized in the fight against corruption. They shall have the necessary independence in order for them to be able to carry out their functions effectively and free from any undue pressure. The State party shall ensure that the staff of such entities has adequate training and financial resources for their tasks. The African Union Convention on Preventing and Combating Corruption of 2003 included a more succinct call for States parties to ensure that national authorities or agencies are specialized in combating corruption and related offences by, among other things, ensuring that the staff are trained and motivated to effectively carry out their duties.

³Organisation for Economic Co-operation and Development (OECD), *Specialised Anti-Corruption Institutions: Review of Models*, 2nd ed. (Paris, 2013), p. 19.

⁴*Ibid.*, p. 20.

7. In 2003, the United Nations Convention against Corruption became the first global treaty to recognize the need for specialized anti-corruption bodies. As noted above, the Convention requires States parties to ensure the existence of specific bodies mandated to focus on prevention, coordination and education in relation to corruption (art. 6) and to combat corruption through law enforcement (art. 36). Both articles specifically require that those bodies be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State party, to be able to carry out their functions effectively and without any undue influence. Article 6 further requires that ACAs be provided with “the necessary material resources and specialized staff, as well as the training that such staff may require to carry out their functions”, while article 36 states more succinctly that “such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks”.⁵

8. Following the adoption and entry into force of the Convention, considerable attention was given to supporting States parties in establishing and/or strengthening existing ACAs in accordance with articles 6 and 36. The United Nations and other international organizations produced guidance, including the following publications: the 2005 United Nations Development Programme (UNDP) publication *Institutional Arrangements to Combat Corruption: A Comparative Study*, the 2006 United Nations Office on Drugs and Crime (UNODC) *Legislative Guide for the Implementation of the United Nations Convention against Corruption* in relation to articles 6 and 36, the 2008 Organisation for Economic Co-operation and Development (OECD) publication *Specialised Anti-Corruption Institutions: Review of Models*, the 2010 UNODC and World Bank Communication for Governance and Accountability Programme guide on *Building Public Support for Anti-Corruption Efforts: Why Anti-Corruption Agencies Need to Communicate and How*, the 2011 UNDP *Practitioners Guide: Capacity Assessments of Anti-Corruption Agencies*, the 2012 UNDP regional publication *Anti-Corruption Agencies: Reflections on International Standards and Experiences and Considerations for Arab Countries* and the 2013 OECD publication *Specialised Anti-Corruption Institutions: Review of Models*. At the same time, priority attention was given to on-demand technical assistance for ACAs.

JAKARTA PRINCIPLES

9. As the implementation of the United Nations Convention against Corruption unfolded over time, evidence from the field suggested the need for specific guidance regarding the “necessary independence” requirement set out in articles 6 and 36 of the Convention in relation to ACAs. To this end, in November 2012, UNDP and UNODC, in collaboration with the Corruption Eradication Commission of Indonesia, organized a meeting in Jakarta that brought together current and former heads of

⁵Subsequently, in 2010, the League of Arab States finalized the Arab Convention for Combating Corruption, in which much of the United Nations Convention against Corruption was localized, including through article 10 (10), by requiring States parties to grant anti-corruption agencies (ACAs) under the Convention the necessary independence to enable them to carry out their functions effectively and free from any undue influence, and to provide the necessary material resources and specialized employees, as well as the training they require to carry out their functions.

ACAs, anti-corruption practitioners and experts to develop a set of basic standards to guide the establishment and operations of anti-corruption authorities.

10. At the conclusion of that meeting, participants endorsed the Jakarta Statement on Principles for Anti-Corruption Agencies, which included 16 principles (the Jakarta Principles) that provide detailed guidance on the requirement for ACAs to have the “necessary independence”. The International Association of Anti-Corruption Authorities subsequently endorsed the Jakarta Statement at its 2013 annual conference in Panama. It was also noted by the Conference of the States Parties to the United Nations Convention against Corruption in its resolution 5/4, entitled “Follow-up to the Marrakech declaration on the prevention of corruption”, in 2013 and in its resolution 7/5, entitled “Promoting preventive measures against corruption”, in 2017.

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11. In its resolution 7/6 of November 2017, on the follow-up to the Marrakech declaration on the prevention of corruption, the Conference of the States Parties to the United Nations Convention against Corruption requested UNODC to continue to develop new knowledge products, guidance notes on the implementation of article 6 of the Convention and technical tools, among other initiatives. More recently, the Mauritius Communiqué was adopted in May 2018 at the regional conference on improving the effectiveness of anti-corruption agencies and financial intelligence units in fighting corruption and money-laundering in Africa, which recommended that ACAs and financial intelligence units develop a set of comprehensive, reliable and objective indicators to assess and measure their effectiveness. In the light of those requests, UNODC, jointly with UNDP and the Sri Lankan Commission to Investigate Allegations of Bribery or Corruption, convened an expert group meeting to develop a commentary on the Jakarta Statement on Principles for Anti-Corruption Agencies. The meeting took place in Colombo from 25 to 27 July 2018 and brought together more than 30 international experts, including various representatives of ACAs from around the world.

12. The Colombo Commentary was developed through a participatory process in which ACAs themselves were encouraged to identify good practices and key lessons. In the Commentary, the origin and justification of each principle are discussed, as are its interconnectivity with other principles and its component parts. The Commentary also includes practical examples of implementation aimed at highlighting good practices, encouraging peer-to-peer knowledge exchanges and providing guidance on the principles to help to implement articles 6 and 36 of the Convention. The Commentary serves as a reference for States parties to the Convention to help them better implement those articles. Self-evaluation questions in relation to each principle complement the Commentary and are designed to assist Governments and ACAs in their review of national legislative and policy frameworks and operational practices to assess how effectively they implement the principles and to identify priority areas for ongoing improvement and support.

13. Each of the 16 Jakarta Principles is important for ensuring that ACAs are effective and supported by strong legal frameworks and should be fully observed and implemented in law and in practice. Political will is fundamental for guaranteeing that the principles are meaningfully implemented and that ACAs remain independent and effective. This requires that actors across the spectrum jointly commit to fully implementing the Convention and ensuring that ACAs have the necessary independence. While laws, policies and institutions are the building blocks, political will is the cement that will bind them together.

14. The Jakarta Principles span five categories: institution, leadership, human resources, financial resources and oversight. In the Commentary, the various principles have been grouped under those five headings in order to support their practical implementation. The principles reflect the recognition that every ACA requires a strong institutional set-up, competent and stable leadership, control over its human resources, reliable financial resources and oversight mechanisms to ensure its necessary independence and effective functioning.



I. Institution

15. ACAs never operate in a vacuum. Once established, they generally start occupying a space within an existing national legal and institutional framework. As a result, they need to have clear mandates to avoid conflicts or overlaps with other institutions. The agencies must also be equipped with appropriate powers to exercise their mandates effectively. Furthermore, ACAs must cooperate with other stakeholders to be effective. Collaboration is key. Finally, ACAs are often established to meet popular expectations of holding those in power to account, yet political expediency alone in setting up a specialized anti-corruption body cannot guarantee its long-term viability. Hence, a strong legal basis for an ACA is crucial to ensuring its sustainability. This chapter focuses on principles 1 to 3: mandate, collaboration and permanence.

MANDATE (PRINCIPLE 1)

ACAs shall have clear mandates to tackle corruption through prevention, education, awareness-raising, investigation and prosecution, either through one agency or multiple coordinated agencies.

Commentary

16. Article 6 of the United Nations Convention against Corruption requires each State party to establish a body to prevent corruption by such means as: (a) implementing the preventive anti-corruption policies referred to in article 5 of the Convention and, where appropriate, overseeing and coordinating the implementation of those policies; and (b) increasing and disseminating knowledge about the prevention of corruption. Article 36 of the Convention further requires each State party to ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Together, those provisions account for the necessity for a State party to task one or more bodies with mandates to prevent, coordinate, raise awareness of, investigate and prosecute corruption offences,⁶ although the Convention leaves it to the States parties to decide how many bodies perform those functions.

⁶See also OECD, *Specialised Anti-Corruption Institutions*, pp. 23–25.

Clear mandate

17. Whatever number of ACAs exist or are established, and in whatever form, each one needs to have a clear mandate, ideally aligned with articles 6 and 36 of the Convention, and should be supported by appropriate powers and resources to discharge its mandate.⁷ Experience has shown that many ACAs suffer from excessively broad mandates without accompanying powers and/or adequate resources to fulfil their responsibilities. For example, ACAs may be tasked with running asset disclosure systems, but lack the powers to compel public servants to submit asset declarations; or they may have a mandate to audit public bodies and provide them with recommendations to prevent corruption, but lack the powers to conduct proper audits and impose penalties for non-compliance with their recommendations; or they may have a mandate to investigate corruption without the police powers necessary to investigate allegations of corruption. As such, good practice shows that the mandate of an ACA needs to be clearly described, ideally in law, including the specific powers needed to discharge the mandate.

18. Where multiple ACAs exist in a single jurisdiction, mandates need to be clearly defined to avoid competition and duplication of efforts. In such a situation, a law reform exercise may be useful to assess the existing multiplicity of mandates and powers in order to ensure that they create a complementary framework for anti-corruption efforts. In practice, such an exercise may be conducted as part of an overall legislative review to ensure national compliance with the Convention.

Prevention, education, awareness-raising, investigation and prosecution

19. It is essential for States parties to ensure that all functions described under articles 6 and 36 of the Convention are carried out by ACAs – with the necessary independence – within the national anti-corruption system. As discussed in more detail in paragraphs 20 and 21 below, there is no single preferred model for designing such institutions. What is important is that each country has one or more sufficiently empowered bodies to perform the following functions:

- **Prevention** (in line with art. 6 (1) (a)). Many ACAs are mandated to lead efforts to develop, implement, oversee and coordinate national anti-corruption strategies.

⁷More information on human and financial resources for ACAs is provided in the discussion of principles 9 to 12.

National anti-corruption strategies in Peru and Ukraine

In Ukraine, the National Agency on Corruption Prevention is specifically mandated to lead the process of developing and implementing the national anti-corruption policy,^a with the policy eventually to be enshrined in law.^b Likewise, in Peru, the Secretariat of Public Integrity supports the implementation of the national policy on integrity and combating corruption.^c

^aPhilipp Fluri and Valentyn Badrack, eds., *Anti-Corruption Measures in Ukraine after the Revolution of Dignity: Key Legislative Aspects* (Kyiv, Centre for Army, Conversion and Disarmament Studies, 2016), pp. 11–12; and Law of Ukraine on the Prevention of Corruption, 14 October 2014, sect. II. Note that while the National Agency on Corruption Prevention focuses on anti-corruption policy and prevention efforts, a separate National Anti-Corruption Bureau has an anti-corruption law enforcement mandate.

^bFluri and Badrack, eds., *Anti-Corruption Measures in Ukraine after the Revolution of Dignity*, p. 9.

^cPeru, Supreme Decree No. 042-2018-PCM.

Some States parties also assign ACAs more specific oversight roles in relation to specific corruption prevention regimes, such as monitoring asset disclosure and conflict-of-interest regimes, public service codes of conduct, political party and/or campaign financing disclosure regimes, public procurement processes and whistle-blower protection schemes. Experience has shown that mandating a single agency to undertake a full range of oversight functions can be counter-productive, as resources may be spread too thin. For this reason, many countries have chosen to set up multiple dedicated preventive ACAs, with each mandated to oversee a key aspect of the prevention regime. For example, a financial intelligence unit may be mandated to prevent money-laundering, an ombudsman may be given the power to oversee codes of conduct, a public procurement authority may oversee compliance with procurement rules and an ethics office may monitor conflicts of interest. Many ACAs tasked with prevention proactively work with government bodies to support internal risk assessments and assist in developing internal action plans, systems and mechanisms to address identified risks.

- **Education and awareness-raising** (in line with art. 6 (1) (b)). Many ACAs have some form of education and awareness-raising function, whether it is focused primarily on promoting anti-corruption efforts within the government bureaucracy or extends further to include such activities with the private sector or the general public. Increasingly, ACAs also work with schools and universities to mainstream anti-corruption education in curricula for students of all ages. Some ACAs have developed creative campaigns to change the mindset of citizens in their respective countries concerning public tolerance of corrupt practices in daily life.⁸

⁸Several examples of such activities are provided in the sections on collaboration (principle 2) and public communication and engagement (principle 16).

- **Investigation** (in line with art. 36). One of the most common forms of ACA is a body mandated to investigate allegations of corruption, whether on its own initiative or in response to a complaint. Good practice shows that where an ACA is given an investigative mandate, it is critical that the ACA be explicitly granted comprehensive investigative powers.

Judicial police powers in Burkina Faso and the Niger

In Burkina Faso and the Niger, the laws creating the High Authority for State Control and Anti-Corruption and the High Authority to Combat Corruption and Related Offences, respectively, grant their investigators judicial police powers so that they no longer need to rely on other authorities to search houses, arrest suspects or freeze bank accounts.^a

Comprehensive investigative powers in Hong Kong, China, Indonesia and Malaysia

The ACAs in Hong Kong, China, and in Indonesia and Malaysia, which are widely regarded as some of the strongest anti-corruption institutions in the world, have explicit and extensive investigative powers. The Indonesian Corruption Eradication Commission, for example, is able to exercise many of its powers without judicial approval in order to ensure its complete independence from any form of extraneous interference.^b

^aBurkina Faso, Organic Law No. 082-2015/CNT, art. 55.

^bHong Kong, China, Cap. 204 Independent Commission against Corruption Ordinance, arts. 10-10A-G; Indonesia Law on the Commission for the Eradication of Criminal Acts of Corruption, No. 30 of 2002, art. 12; and Malaysian Anti-Corruption Commission Act, No. 694, 2009, part V.

- **Prosecution** (in line with art. 36). Constitutions and national legal frameworks often prohibit mandating new ACAs with prosecutorial powers. It is usually very difficult to curtail an existing prosecutorial service that already has a mandate to prosecute corruption offences and to give prosecutorial power over such offences to a new institution. In any case, an existing prosecutorial service can be effective if it is sufficiently independent. Oversight over the prosecutorial service responsible for combating corruption should be impartial and free of political interference.

Prosecution Service in Brazil

In Brazil, the Prosecution Service is a driving force behind effective law enforcement in corruption cases. One reason is that the prosecutors have effective tools at their disposal, such as plea-bargaining, but another reason is their protection by the Constitution: prosecutors cannot be removed from their positions by a political decision.^a

^aBrazil, Constitution of the Federative Republic of Brazil, 1988, art. 128.

In many other cases, however, where existing prosecutorial services did not appear sufficiently independent or able to tackle corruption, countries have established specialized anti-corruption units within the prosecutorial service, seconded prosecutors directly to an ACA or endowed a new ACA with the power to prosecute.

Specialized prosecution in Jordan and Ukraine

The law establishing the Jordan Integrity and Anti-Corruption Commission explicitly requires that the Public Prosecution have a prosecution department specialized in corruption cases, which shall have the mandate over the cases referred to it by the Board of the Commission.^a In Ukraine, a specialized anti-corruption prosecutor's office operates as an independent structural unit within the office of the General Prosecutor and is responsible for supporting and overseeing criminal investigations launched by the National Anti-Corruption Bureau.^b

Power to prosecute in Fiji, Malaysia, the Philippines, Rwanda and the United Kingdom

In Malaysia, the Chief Commissioner has all the powers of an officer of the Malaysian Anti-Corruption Commission and such powers of a Deputy Public Prosecutor as authorized by the Public Prosecutor for the purposes of the Malaysian Anti-Corruption Commission Act.^c In the United Kingdom of Great Britain and Northern Ireland, the Serious Fraud Office is responsible for the detection, investigation and prosecution of serious fraud, bribery and corruption cases, with investigators and prosecutors working together from the start of any case.^d The Independent Commission against Corruption in Fiji^e and the ombudsmen's offices in the Philippines^f and Rwanda^g have been endowed with their own prosecution powers in relation to corruption offences.

Power to take over and pursue prosecutions in Indonesia

In Indonesia, the law empowers the Corruption Eradication Commission to take over prosecutions from the police or prosecutor's office in a range of circumstances, including where a corruption complaint is ignored, a case is delayed for no reason or a case is itself tainted by corruption or hampered by external interference, or in any other circumstances where the police or the prosecutor's office is unable to carry out the case responsibly and adequately.^h

^aJordan, Integrity and Anti-Corruption Law, No. 13 of 2016, art. 17.

^bFluri and Badrack, eds., *Anti-Corruption Measures in Ukraine after the Revolution of Dignity*, pp. 12–13.

^cMalaysian Anti-Corruption Commission Act 2009, part II, sect. 5 (6).

^dUnited Kingdom, Serious Fraud Office, "SFO historical background and powers". Available at www.sfo.gov.uk/.

^eFiji Independent Commission against Corruption Act, No. 11 of 2007, sect. 12B.

^fPatrick Meagher, "Anti-corruption agencies: rhetoric versus reality", *Journal of Policy Reform*, vol. 8, No. 1 (2005), p. 75.

^gRwanda, Law No. 76/2013 of 11 September 2013 determining the mission, powers, organization and functioning of the Office of the Ombudsman, art. 13.

^hIndonesia, Law No. 30 of 2002, arts. 8–9.

One or more agencies

20. States parties can meet the requirements of the Convention through a multi-agency or a single-agency approach to addressing corruption.⁹ In some countries, a multi-agency approach has been adopted, with several bodies performing the different core anti-corruption functions described in paragraphs 16 and 19 above. For example, an anti-corruption commission may lead efforts to educate and prevent corruption, while the police will be responsible for investigating alleged cases of corruption and the prosecutor's office will take such cases to court. Other countries have adopted a single-agency approach whereby a specialized body is established to specifically address the core anti-corruption functions of prevention, education, investigation and prosecution. This is the most visible and arguably the most well-known version of an ACA.

21. There is no one-size-fits-all approach to determining which institutional framework will be most appropriate for a given national context;¹⁰ models also need to be adapted to account for differences in size, geography, systems of government (e.g., federal or decentralized) and available human and financial resources. Some argue that States need to strengthen existing bodies with enhanced mandates in accordance with the Convention and national anti-corruption legislation. Others have argued that without a strong, central ACA with clear powers to handle the spectrum of anti-corruption activities – from prevention and education to investigation and prosecution – problems of institutional coordination are likely to lead to weaknesses in investigations, resulting in unsuccessful prosecutions.¹¹ This model also helps to centralize information and intelligence on corruption and can greatly reduce the coordination problems that often arise in multi-agency approaches.¹² This is especially true in contexts where the rule of law is weak and institutions are not accustomed to inter-agency cooperation. However, a key challenge for the single-agency model is to avoid misinterpreting the principle of independence in a manner that leads to the de facto isolation of the agency. It is important for such agencies to establish successful working relationships with other key institutions within the executive branch and beyond.¹³ In any case, experience suggests that ACA “transplants” based on foreign models will have limited success unless they are first supported by an assessment of the capacity of existing agencies and institutions and a comparison of the merits of consolidating existing mandates into a single agency.¹⁴

⁹OECD, *Specialised Anti-Corruption Institutions*, p. 26; and Meagher, “Anti-corruption agencies”, p. 70.

¹⁰ Alan Doig, Robert Williams and Ahmed Ashour, *Anti-Corruption Agencies: Reflections on International Standards and Experiences and Considerations for Arab Countries*, Arkan El Seblani, ed. (2012); and Center for the Advancement of Public Integrity, Columbia Law School, “An overview of state and local anti-corruption oversight in the United States”, Issue brief, No. 7 (August 2016).

¹¹Jon S. T. Quah, “Combating corruption in the Asia-Pacific countries: what do we know and what needs to be done?”, *International Public Management Review*, vol. 10, No. 1 (2009).

¹²Meagher, “Anti-corruption agencies”, p. 72.

¹³See also the section on collaboration (principle 2).

¹⁴OECD, *Specialised Anti-Corruption Institutions*, pp. 42–44.

COLLABORATION (PRINCIPLE 2)

ACAs shall not operate in isolation. They shall foster good working relations with State agencies, civil society, the private sector and other stakeholders, including international cooperation.

Commentary

22. Whether a State party takes a multi-agency approach or a single-agency approach to addressing corruption, good practice shows that ACAs need to cooperate with other agencies and organizations in order to be effective. Even stand-alone agencies with comprehensive mandates still require assistance from agencies such as financial intelligence units, central authorities for mutual legal assistance or asset recovery offices in handling corruption cases, the prosecutor's office in some prosecutions, the ministry of education in support of education activities, or other line ministries in efforts to prevent corruption in key vulnerable sectors (e.g., health or customs). Strong networks with civil society organizations, including community organizations, religious bodies and youth groups, the private sector and the media can also be vital to the effective functioning of ACAs.¹⁵

23. Partnerships with other anti-corruption stakeholders help to build trust and to reduce transaction costs. For example, if prosecutors are involved in a case from the start of its investigation, they do not need to familiarize themselves with the case later on when it goes to court. Similarly, if civil society organizations already have public relations mechanisms in place at the community level, ACAs do not need to develop them again if they work hand in hand with those organizations. Working in partnership is more efficient. Partnerships enable ACAs to harness external expertise developed in other institutions for the benefit of the fight against corruption. At the same time, collaboration must be balanced with legal requirements regarding confidentiality. Most ACAs are legally bound to keep the details of ongoing investigations confidential, although they may be empowered to share information with other law enforcement agencies. ACAs must also carefully manage partnerships with other agencies and non-governmental institutions to avoid potential conflicts of interest. The more extensively their information is shared, the more care ACAs will need to take, guided by specific information-sharing rules and protocols to avoid confidentiality and privacy breaches.

Relations with other State agencies

24. ACAs need to build trust with other State agencies. Indeed, the fight against corruption is most successful when it has a broad foundation of support. Buy-in from all sectors of government is very important. In some countries, collaboration between ACAs and other bodies is explicitly mandated by law. Such provisions afford ACAs a legal ground to cite when reaching out to other authorities to obtain information, documents, action or cooperation for law enforcement purposes. In

¹⁵More detailed information is provided in the section on public communication and engagement (principle 16).

order to be effective, any legislation should ideally be complemented by practical arrangements to facilitate such coordination. These will vary in form depending on the local context.

Inter-agency cooperation and coordination in Italy, Mali, Nigeria, Sierra Leone and the United States

In Sierra Leone, the law explicitly states that the Commission may, in the performance of its functions, work in cooperation with any other persons or bodies as it may think appropriate, and it shall be the duty of any such person or body to cooperate with the Commission.^a In Nigeria, the law states that the Economic and Financial Crimes Commission shall consist of members from a range of different law enforcement and other agencies;^b in practice, the Commission acts as a secretariat for an inter-agency task team comprising 22 members with anti-corruption, transparency and/or accountability duties.^c In Italy, the public prosecutor must inform the President of the National Anti-Corruption Authority of any prosecution of corruption or financial crime.^d In Mali, the Central Office for Combating Illicit Enrichment is in charge of ensuring effective collaboration and coordination between all national authorities directly or indirectly involved in combating illicit enrichment, such as the prosecutors specialized in economic and financial crime, the National Financial Intelligence Processing Unit, the Office of the Auditor General and the inspection authorities of ministerial departments.^e In the United States of America, there are numerous examples of state and federal agencies working across jurisdictions and/or collaborating within a single jurisdiction to investigate and prosecute corruption crimes, with task forces commonly formed to coordinate the different resources and powers of existing law enforcement bodies.^f

^aSierra Leone, Anti-Corruption Act 2008, Act No. 12, sect. 10 (1). Section 10 (2) goes on to specify that "without prejudice to the generality of subsection (1), such persons or bodies include the Auditor-General, the Accountant-General, the Commissioner-General of the National Revenue Authority, the National Security Adviser, the Inspector-General of Police, the Chief Executive Officer of the National Public Procurement Authority and financial institutions".

^bNigeria, Economic and Financial Crimes Commission (Establishment) Act 2002, sect. 2.

^cResponse by the Economic and Financial Crimes Commission of Nigeria to the United Nations Office on Drugs and Crime (UNODC) survey of ACAs, 13 July 2018.

^dItaly, Penal Code, Law No. 69 on Provisions on Crimes against the Public Administration, Mafia-type Associations and False Accounting of 27 May 2015, art. 7.

^eMali, Ordinance No. 2015-032/P-RM of 23 September 2015, art. 4, and Law No. 2014-015 of 27 May 2014, art. 7.

^fCenter for the Advancement of Public Integrity, Columbia Law School, "Strategies for increasing and improving public corruption prosecutions: the task force model", Issue brief, No. 6 (August 2016).

25. In some countries, ACAs have developed formal partnerships with other public bodies (e.g., ministries and departments), in particular in the area of prevention, to ensure that their activities have greater impact. These agreements usually set out the key grounds for cooperation between the two agencies, including higher-level partnership principles and/or specific joint activities.

Formal partnerships in Bhutan, France, Mali, Peru and Tunisia

In Bhutan, the Anti-Corruption Commission has entered into multiple memorandums of understanding with national agencies, civil society organizations and international agencies and made them publicly available on its website.^a In Tunisia, the National Anti-Corruption Authority has concluded formal partnership agreements with 15 ministries to work together when an investigation relates to the work or staff of a relevant ministry, and joint task forces have been established to identify and tackle corruption risks in the Ministry of Health, the customs administration, the police and the municipal authorities. In Mali, the ACA does not have prosecution functions and has therefore developed a framework agreement with the three prosecutor pools specialized in economic and financial crimes prosecution within the prosecutor's office.^b The French Anti-Corruption Agency has also signed memorandums of understanding with key prosecution bodies, the Unit for Processing Intelligence and Action against Illicit Financial Networks and the agency responsible for training local civil servants, in addition to other memorandums of understanding with key foreign counterparts.^c In Peru, the High-Level Anti-Corruption Commission designed an anti-corruption strategy in the education sector in partnership with the Ministry of Education. Members of the public sector, private sector and civil society signed a commitment entitled "Education for Integrity" to promote a culture of integrity, ethics and fighting against corruption starting in the first years of education.

^a Available at www.acc.org.bt/.

^b Response by Mali to the UNODC survey of ACAs, 24 July 2018.

^c Response by France to the UNODC survey of ACAs, 22 July 2018.

26. In other countries, practical collaboration developed over time, as areas of specialization were identified and harnessed to coordinate anti-corruption efforts.

Practical collaboration in prosecutions in Croatia, Malaysia, Mauritius and Peru

In Malaysia, a cohort of Deputy Public Prosecutors is assigned by the Attorney General's office to work on cases within the Malaysian Anti-Corruption Commission, while the Commission and the police have set up a joint committee to combat corruption in order to help expedite investigations, disciplinary actions and the sourcing of information.^a In Mauritius, investigators from the Independent Commission against Corruption often work side by side with police officers, many of whom are former colleagues, while a dedicated unit of eight police officers based at the Commission assists with operations requiring police powers that the Commission lacks, such as conducting sting operations and making arrests.^b During prosecutions, the Director of Public Prosecutions usually delegates prosecutions to the Commission's legal team but collaborates throughout the process.^c In Croatia, in response to ongoing

Practical collaboration in prosecutions in Croatia, Malaysia, Mauritius and Peru (*continued*)

challenges regarding competency differences between the specialized prosecutors in the Office for the Suppression of Corruption and Organized Crime, the police and the judiciary, the Government created specific bodies within the judiciary and the police to complement the Office. Those bodies were designed to operate in tandem with the Office's own institutional structures in the capital and in the regions of Croatia.^d In Peru, where a multi-agency approach made collaboration even more important, the Office of the Comptroller General, the public prosecutors and the judiciary issued new guidelines that specified their respective roles in the handling of corruption cases. The new protocols immediately improved communication between the Office of the Comptroller General and the prosecutors.^e

^a Meagher, "Anti-corruption agencies", pp. 88-89.

^b Gabriel Kuris, "From a rocky start to regional leadership: Mauritius's Anti-Corruption Agency, 2006-2012" (Princeton, New Jersey, Innovations for Successful Societies, Princeton University, 2013), p. 9.

^c Ibid.

^d Gabriel Kuris, "Cleaning house: Croatia mops up high-level corruption, 2005-2012" (Princeton, New Jersey, Innovations for Successful Societies, Princeton University, 2013), p. 9.

^e Blair Cameron, "Battling a cancer: tackling corruption in Peru, 2011-2014" (Princeton, New Jersey, Princeton University, Innovations for Successful Societies, 2015), p. 10.

Relations with civil society

27. Good practice has shown that collaborative engagement by ACAs with civil society is vital to strengthening the capacity of ACAs to discharge their mandates efficiently and effectively, as well as to facilitate information-sharing within the country across jurisdictions.

Cooperation with civil society encouraged by law in Morocco and Slovenia

In Morocco, the law specifically calls on the National Authority for Integrity and Combating Corruption to establish cooperative relationships with national and international public authorities, non-governmental organizations, universities and research centres. In Slovenia, the law explicitly mandates the Commission for the Prevention of Corruption to cooperate with international anti-corruption agencies, as well as with scientific, professional, media and non-profit organizations from the private sector, in the prevention of corruption^a and includes a specific provision enabling the Commission to work with non-profit organizations by, for example, providing them with funds from the Commission's budget to perform tasks related to training, informing and raising the awareness of the general public and public sector bodies and the transfer of good practice.^b

^a Slovenia, Integrity and Prevention of Corruption Act, art. 12.

^b Ibid., art. 17 (2).

28. Cooperation between ACAs and civil society has been effective in both national and regional contexts.

Agency performance assessments by civil society in Asia

ACAs in eight countries across Asia have worked in collaboration with Transparency International to assess and improve their performance, develop reform priorities and advocate changes that would improve their enabling environment.^a Their work has included developing a regional report comparing the assessment results of five ACAs, with the launch of the report followed by an experience-sharing meeting between ACA leaders and Transparency International. This provided opportunities for ACAs themselves to share and exchange good practices and lessons learned across jurisdictions.^b

^aBetween 2013 and 2017, Transparency International developed a research tool based on participatory assessments and aimed at highlighting the strengths and weaknesses of the context, structure, policies and practices of ACAs. Independent research commissioned by Transparency International chapters in consultation with ACAs reveals these strengths and weaknesses, and provides recommendations for reform and follow-up engagement. National-level assessments of the following ACAs have been finalized utilizing the methodology: Bangladesh, Bhutan, Indonesia, Maldives, Mongolia, Pakistan, Sri Lanka and Taiwan Province of China. (Transparency International, *Strengthening Anti-Corruption Agencies in Asia Pacific: Regional Studies Report*, Berlin, 2017).

^bTransparency International secretariat, "Anti-corruption agencies must start prosecuting the powerful to gain credibility", 25 October 2017.

29. At the national level, individual ACAs have developed effective partnerships with civil society to supplement their own, often limited, investigative, technical, research and/or awareness-raising resources.

Effective partnerships with civil society in Bangladesh, Bosnia and Herzegovina, France, Mexico, Nigeria, Sri Lanka and Tunisia

In Bangladesh, the Anti-Corruption Commission engaged with Transparency International Bangladesh under a memorandum of understanding^a by which Transparency International committed to working with the Commission to support the training of its investigation officers; to facilitate corruption case referrals from the public; to provide research support; and to facilitate a series of collaborative initiatives, including public hearings on corruption in selected service delivery sectors, civic awareness and youth engagement. In Bosnia and Herzegovina, the Agency for the Prevention of Corruption and the Coordination of the Fight Against Corruption drew on the expertise of Transparency International Bosnia and Herzegovina when drafting the new national anti-corruption strategy and encouraged the organization to play a supportive role in its implementation. For example, Transparency International Bosnia and Herzegovina worked with 20 municipalities to develop and adopt localized integrity plans (anti-corruption strategies) and is involved in monitoring their implementation. This collaboration allowed the Agency to extend the reach of its anti-corruption monitoring activities to the subnational level.^b The French

Effective partnerships with civil society in Bangladesh, Bosnia and Herzegovina, France, Mexico, Nigeria, Sri Lanka and Tunisia (*continued*)

Anti-Corruption Agency regularly collaborates with civil society organizations, including by partnering with them on joint training programmes, requesting their input and comments on draft guidelines and reports and facilitating their participation in the strategic board of the Agency.^c In Mexico City, the Office of the Comptroller General, which is responsible for overseeing, auditing and investigating the city's public agencies, local government entities and quasi-governmental agencies, runs a programme that selects "citizen comptrollers" to review the expenditures of public agencies through their observations of public procurement processes and to evaluate the use of public resources. If they observe any irregularities, the citizen comptrollers file complaints that may lead the Comptroller General or other authorities to conduct formal audits or investigations.^d In Nigeria, the Inter-Agency Task Team serves as the national anti-corruption coordinating and oversight body and has several working groups, with civil society organizations as participating members. In Sri Lanka, the Commission to Investigate Allegations of Bribery or Corruption harnessed the technical expertise of civil society when drafting new asset disclosure legislation, bringing in external capacities to supplement its own research/drafting team.^e In Tunisia, the National Anti-Corruption Authority concluded partnerships with civil society, including a partnership agreement with the journalists' union and a civil alliance anti-corruption charter. In furtherance of that charter, the Authority supports awareness-raising activities alongside civil society organizations and undertakes a range of activities with youth bodies and through schools.

^a"ACC, TIB to work together to fight corruption", *Daily Star* (Dhaka), 5 June 2017.

^bTransparency International Bosnia and Herzegovina, "20 Municipalities developed their integrity plans in cooperation with TI BiH", 22 November 2016.

^cResponse by France to the UNODC survey of ACAs, 22 July 2018.

^dPatricio Martínez Llompert, "Mexico City's citizen comptrollers program: a 'bottom-up' approach to cost-effective fraud prevention", Issue brief, No. 4 (New York, Center for the Advancement of Public Integrity, Columbia Law School, August 2016).

^eTransparency International Sri Lanka, "TISL requests government to amend the Assets and Liabilities Act", 2 August 2016.

Relations with the private sector

30. Relationships with the private sector are generally more complex. ACAs are often mandated both to collaborate with the private sector, notably the banking sector, and to oversee private sector accountability and anti-corruption efforts.

Cooperation with the private sector encouraged by law in Jordan and the United Republic of Tanzania

In the United Republic of Tanzania, the Prevention and Combating of Corruption Act of 2007 includes a provision stating that the Prevention and Combating of

Corruption Bureau “shall establish and maintain a system of: (a) cooperation with the private sector, and in particular, financial institutions on matters relating to the commission of an offence under [the] Act; and (b) encouraging the private sector to report to the Bureau the commission of offences under [the] Act”.^a In Jordan, the Integrity and Anti-Corruption Commission is specifically mandated to ensure that private sector control bodies and civil society institutions adopt and apply good governance standards and principles.^b

Practical examples of private sector cooperation in France and Malaysia

Similarly, the French Anti-Corruption Agency is specifically mandated to oversee the private sector in relation to promoting accountability and transparency standards and preventing corruption. One of the first major pieces of guidance produced by the Agency after its establishment in 2017 related to private sector oversight, and the Agency worked closely with both the private sector and the broader community to develop that guidance. It published its draft guidelines for the private sector on its website and called for input and comments from all relevant individuals and organizations. As a result of the consultation, the Agency received and considered 450 observations from all sectors, including from international organizations, law firms, companies, non-governmental organizations and academics, before releasing its final recommendations in December 2017.^c The same process will be used to evaluate the implementation of the multi-year strategy of France against corruption, adopted in September 2019.^d In Malaysia, the Anti-Corruption Commission has many years of experience working with the private sector, as it recognized early the high risks of corruption in that sector. Commission officers are sometimes seconded to private sector bodies to act as their chief integrity officers on a contract basis for a certain period of time, with their salary paid by the private sector body concerned. The chief integrity officer has all the powers of a Commission officer to act on allegations of corruption. The Commission also developed a corporate integrity pledge by which private sector bodies commit to the anti-corruption principles for corporations in Malaysia, which require every company to declare that it will not commit corrupt acts, will work towards creating a business environment that is free of corruption and will uphold the anti-corruption principles in the conduct of its business and in its interactions with its business partners and the Government.^e

^aUnited Republic of Tanzania, Prevention and Combating of Corruption Act, 2007, sect. 46.

^bJordan, Integrity and Anti-Corruption Law, No. 13 of 2016, art. 4 (I).

^cFrench Anti-Corruption Agency, “Guidelines to help private and public sector entities prevent and detect corruption, influence peddling, extortion by public officials, unlawful taking of interest, misappropriation of public funds and favouritism” (December 2017).

^dResponse by France to the UNODC survey of ACAs, 22 July 2018.

^eJoachim Bartels, “Malaysian Anti-Corruption Commission issues five anti-corruption principles”, Business Information Industry Association, 24 May 2012; and UNODC, Open-ended Intergovernmental Working Group on the Prevention of Corruption, “Thematic compilation of relevant information submitted by Malaysia: article 12 UNCAC (Private sector and public-private partnerships)”.

International cooperation

31. In many countries, the law also enables ACAs to engage in international cooperation, including with other national ACAs as well as regional and international law enforcement or anti-corruption actors.

International cooperation encouraged by law in Jamaica and Latvia

In Jamaica, the Integrity Commission Act explicitly states that the Commission may, with the approval of the Minister, enter into a memorandum of understanding or other agreement with a foreign agency whose functions are similar to those of the Commission under the Act, regarding the sharing or exchange of information with the Commission relating to the prevention, detection and investigation of an act of corruption.^a In Latvia, the law on the Corruption Prevention and Combating Bureau also demands that, in its performance of the functions mentioned in articles 7 (preventing corruption), 8 (combating corruption) and 9 (monitoring party finance laws) of the law, the Bureau cooperate with other government and municipal institutions, public organizations and foreign institutions.^b

International cooperation through global, regional and bilateral mechanisms in Croatia and Mauritius

In Mauritius, investigations by the Independent Commission against Corruption often crossed borders, requiring the help of foreign agencies, and the Commission maintained strong relations with regional peer agencies and participated actively in international bodies, such as the Southern African Forum Against Corruption and the Africa Group of the Commonwealth. International cooperation gave the Commission access to the specialized capabilities of peer agencies, such as the forensic expertise of South Africa.^c Likewise, in Croatia, it has been reported that international relationships were essential to uprooting many forms of corruption, and that complex investigations into organized crime and corrupt business practices required the collection of evidence from foreign banks, corporations and Governments. The State Attorney's Office signed memorandums of understanding with agencies across the region, in the European Union and the United States, and as far afield as Chile and China. The Croatian Office for the Suppression of Corruption and Organized Crime participated actively in international organizations, such as the International Criminal Police Organization (INTERPOL); the European Union Agency for Law Enforcement Cooperation (Europol); the European Anti-Fraud Office; and the Judicial Cooperation Unit of the European Union (Eurojust).^d

^aJamaica, Integrity Commission Act, No. 26 of 2017, sect. 7 (12).

^bLatvia, Law on the Corruption Prevention and Combating Bureau (2002), sect. 11 (2).

^cKuris, "From a rocky start to regional leadership", pp. 9–10.

^dKuris, "Cleaning house", p. 11.

PERMANENCE (PRINCIPLE 3)

ACAs shall, in accordance with the basic legal principles of their countries, be established by a proper and stable legal framework, such as the Constitution or a special law to ensure continuity of the ACA.

Commentary

32. Experience from around the world has shown that where ACAs are effective, their success can pose a threat to their very existence. Successful prosecutions of high-level corruption can sometimes lead to political calls to either abolish ACAs or substantially curtail their powers. In order to protect ACAs from encroachments on their mandates, it is important that the legal framework establishing ACAs be designed to withstand hasty amendment.

33. Ideally, ACAs will be established through provisions entrenched in the national constitution, the fundamental legal document that frames the key institutions of government.¹⁶ A national constitution is the supreme or highest law in a State; as a result, officials may usually only amend a constitution by either a special majority of the legislature and/or a public referendum. Some constitutions also require the Government to consider amendments over multiple legislative sessions, allowing time for members of a legislative body to properly consider the impact of amendments and for the public to voice concerns about them if the public believes that they are not in the national interest. Such requirements make it less likely that officials could easily or quickly alter ACA mandates enshrined in a constitution.¹⁷ Almost 30 countries have included some form of ACA in their national constitutions, with different levels of detail describing the agency's role.¹⁸

34. In some countries, however, the complexity of enacting constitutional amendments may prohibit the integration of ACA mandates into the existing constitution. In such cases, it is still critical to establish ACAs through properly enacted laws, rather than, for example, by an executive decree, which can be revoked more easily. Laws should be sufficiently detailed to effectively empower ACAs and limit the possibility for others to restrict or change ACA mandates and powers, except in accordance with appropriate procedures for legislative amendments. Enacting an ACA law through the legislature ensures the proper involvement of members of a legislative body in discussions on the agency's mandate and powers and may contribute to a more inclusive, cross-party and consensual endorsement of its creation and operation. In order to protect ACA mandates, it may be possible in some jurisdictions to include specific provisions in the law that would require a higher voting threshold to approve future amendments.

¹⁶Marie Chêne, "Anti-corruption clauses in constitutions", Transparency International, Anti-Corruption Help Desk, 30 September 2013.

¹⁷Ibid.

¹⁸Algeria, Bhutan, Burkina Faso, Central African Republic, Ecuador, Eswatini, Fiji, Ghana, Iraq, Kenya, Maldives, Mexico, Morocco, Namibia, Nepal, Papua New Guinea (ACA not yet established), Saint Lucia, Singapore, Somalia (ACA not yet established), South Sudan, Sri Lanka, Sudan, Thailand, Trinidad and Tobago, Tunisia, Uganda, Venezuela (Bolivarian Republic of), Zambia and Zimbabwe. (Constitute Database, "Counter-corruption commissions". Available at www.constituteproject.org/).



II. Leadership

35. ACAs function effectively only with good leadership in place. The tone is set at the top. If the leadership is poor, the rest of the institution is likely to follow suit. Good leadership requires integrity, competence, impartiality and an apolitical stance. However, good leadership is not enough. ACA leaders need to have security of tenure and sufficient time to succeed without the risk of being removed arbitrarily. Finally, if the leadership is removed, the agency’s continuity of service should be ensured by law. ACAs will prosper only if good leadership is guaranteed. This chapter focuses on Jakarta Principles 4 to 6: appointment, continuity and removal.

APPOINTMENT (PRINCIPLE 4)

ACA heads shall be appointed through a process that ensures their apolitical stance, impartiality, neutrality, integrity and competence.

Commentary

36. Articles 6 and 36 of the United Nations Convention against Corruption both explicitly call for the “necessary independence” of ACAs. This is clearly connected to the requirement under the Convention that each State party enable ACAs to carry out their functions effectively and free from any undue influence. At the regional level, similar international law, guidelines and standards have been adopted that highlight the importance of the independence of ACAs.¹⁹ This independence must begin with the process for selecting leadership, whether it consists of a single head, a commission or a board, including one or more deputies. This principle should be read together with principle 5, continuity, and principle 6, removal, which can also affect the independence of ACAs, as well as principle 7, ethical conduct, which links to values such as impartiality, integrity, competence and being apolitical.

¹⁹De Jaegere, “Principles for anti-corruption agencies”, pp. 92–93; and Sofie Arjon Schütte, *The Fish’s Head: Appointment and Removal Procedures for Anti-Corruption Agency Leadership*, U4 Issue No. 12 (Bergen, Norway, U4 Anti-Corruption Resource Centre, Chr. Michelsen Institute, 2015).

Apolitical stance

37. Noting the guidance in the Convention that ACAs must be free from any undue influence, it is crucial that ACA heads are, and are seen to be, apolitical. ACA heads must be trusted to stay out of politics to address all manifestations of corruption, no matter which entity or person may be involved. Ensuring that the head of an ACA is apolitical in practice can require a careful assessment of past conduct and affiliations. Ideally, ACA heads should not be, or recently have been, active members of a political party, nor should they have been donors to or patrons of a political party. However, it is also important to ensure that such prohibitions are not abused to reject competent candidates on the basis of general party membership or alleged political ties.

Apolitical stance requirement for heads of agencies in Bhutan, Burkina Faso and Nepal

In Bhutan, the Constitution specifically requires that the head of the ACA (as one of a number of constitutional office holders) have no political affiliation.^a In Nepal, members of the Commission for the Investigation of Abuse of Authority must show that they are not members of any political party immediately before their appointment.^b In Burkina Faso, citizens are eligible for candidature to head the ACA only if they have no noteworthy political engagement.^c

^aConstitution of Bhutan of 2008, art. 31 (3)

^bConstitution of Nepal of 2015, art. 238 (6) (b).

^cBurkina Faso, Organic Law No. 082-2015/CNT, art. 14.

Impartiality and neutrality

38. Particularly for ACAs with a mandate to investigate and/or prosecute corruption cases, it is essential that the ACA and, by extension, the ACA head are, and are seen to be, impartial and neutral. These two concepts are closely related. Impartiality means that the ACA head must not be seen as biased for or against any particular stakeholders, for example on the basis of race, gender, religion or class. This applies equally to the leadership's interaction with internal ACA staff and its engagement with external individuals.

Impartiality requirement for heads of agencies in Jamaica and Jordan

The Jamaican Integrity Commission Act includes as an eligibility requirement for the appointment of commissioners that the individuals be persons of integrity, capable of exercising competence, diligence, sound judgment and impartiality in fulfilling their functions.^a Similarly, the law in Jordan specifically requires that the Commission be managed and administered by a Board composed of a Chair and four members who are known for their fairness, integrity, impartiality and expertise.^b

^aJamaica, Integrity Commission Act, sect. 8 (3).

^bJordan, Integrity and Anti-Corruption Law, No. 13 of 2016, art. 6 (a) (1).

39. Neutrality requires that the head of an ACA can also be trusted not to take sides in cases except as required in defence of the law.

Prohibition of outside professional activity for heads of agencies in Burkina Faso, Jordan and Senegal

Several countries, including Burkina Faso and Senegal, require the heads of their agencies to refrain from any other public or private professional engagements in order to avoid conflicts of interest.^a Jordan goes further and specifies that the Chair and members shall be fully devoted to their work at the Commission and shall not practice any other job or profession, and that they shall not be delegated or seconded or on leave from any other institution.^b

^aBurkina Faso, Organic Law No. 082-2015/CNT, art. 14; and Senegal, Law No. 2012-30 of 28 December 2012, art. 5.

^bJordan, Integrity and Anti-Corruption Law No. 13 of 2016, art. 6 (b).

Integrity

40. ACAs are intended to promote the highest values of integrity and public accountability through their work. Accordingly, an ACA head must reflect the ideals of the agency and must be – and be seen as – a person of high integrity. Demonstrating such integrity requires that others recognize the ACA head as a person who is respectful of the constitution and the rule of law. Therefore, an ACA head should not have been the subject of a corruption investigation or any other criminal investigation in the past.

41. Conversely, the law should ideally limit the opportunity for individuals to abuse provisions concerning past investigations to disqualify a candidate from being appointed or to improperly trigger the dismissal of an effective ACA head. Therefore, the law will usually require a conviction or even a final conviction by a court of law to disqualify a candidate or a sitting ACA head.

Clean criminal record requirement for heads of agencies in Jamaica, Peru and Slovenia

In Jamaica, the law stipulates that a person shall not become a Commissioner if he or she is an undischarged bankrupt or has at any time been convicted of an offence involving dishonesty or moral turpitude.^a Similarly, in Peru, candidates for the position of Secretary of Public Integrity cannot have been convicted for a wilful offence.^b In Slovenia, the law requires, among other things, that the Chair and Deputies of the Commission for the Prevention of Corruption not have been sentenced to imprisonment by way of a final judgment.^c

^aJamaica, Integrity Commission Act, sect. 9 (b)–(c).

^bPeru, Law No. 29976 (2013).

^cSlovenia, Integrity and Prevention of Corruption Act, art. 7 (2).

42. ACA leaders must have a public and personal history that can withstand scrutiny. This is also important in a practical sense, as ACA heads must not be vulnerable to threats of blackmail or intimidation that could arise if their past actions were called into question. In many countries, integrity is explicitly listed among the criteria for the selection of heads of agencies. A background check or “morality check” is sometimes required prior to the appointment of a new head of agency, but again, such checks need to be designed in a way that prevents opportunities for abuse or manipulation to exclude good candidates. Leaders of an ACA should also be subject to the same integrity requirements applicable to other political and public service leaders, notably the disclosure of assets and conflicts of interest, with such disclosures ideally made public in an effort to model the values of transparency and accountability.

Competence

43. Article 7 (1) of the Convention calls upon public bodies to adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials, that are based on principles of efficiency and transparency and objective criteria such as merit, equity and aptitude. Competence is critical to the effective performance of public service roles, including for non-elected public officials such as those who lead ACAs.

Competence criteria for the agency head in Ukraine

In Ukraine, the law requires that the head of the National Anti-Corruption Bureau be a citizen of Ukraine who possesses higher legal education, work experience of at least 10 years in their professional field, work experience of at least five years in managerial positions in government authorities, institutions or organizations or in international organizations, and fluency in the official language, and who is able to carry out appropriate official duties based on the person’s professional and moral qualities, educational and professional level and state of health.⁹

⁹Ukraine, Law on the National Anti-Corruption Bureau of Ukraine, 25 February 2015, art. 6.

44. The ability to maintain the confidence of the public and of the public officials with whom it interacts is critical to the effective working of an ACA. Experience shows that confidence is closely related to competence. If people cannot trust that the ACA and its leadership are sufficiently skilled to discharge their powers effectively, efficiently and within the law, confidence in the ACA will drop. It is essential that the ACA head is, and is seen to be, a competent leader, administrator and anti-corruption practitioner. In practice, this means that the ACA head should have the following:

- Relevant educational qualifications that support the claim of competence/expertise

- A relevant work history that demonstrates the development of relevant skills over time, including in relation to education, law enforcement and/or anti-corruption in general
- Demonstrated managerial capacities, including the ability to manage staff and public funds

The requirements above are often listed in laws as criteria for selecting members of an ACA.

Gender parity requirement in agency leadership in Morocco

Interestingly, Morocco goes even further and not only encourages a leadership team that possesses experience, expertise and skills in the field of activity of the ACA and who are known for their integrity, impartiality, righteousness and probity, but also requires that members of the council of the agency be appointed taking into account, as far as possible, the principle of parity between men and women, in accordance with the provisions of article 19 of the Constitution of Morocco.^a This requirement of gender balance represents good practice in terms of encouraging diversity in ACA leadership, which, ideally, will enable the work of the ACA to be more inclusive and representative of diverse communities.

^aMorocco, Law No. 113-12 of 9 June 2015, art. 7.

Appointment through a process

45. Those who review and appoint the ACA head should vet candidates against a basic set of criteria in order to ensure that they have the requisite capacities to effectively perform the functions required.

Eligibility criteria for agency heads in Mauritius, Nepal and Uganda

In Nepal, members of the Commission for the Investigation of Abuse of Authority must show that they meet all eligibility requirements, including that they hold a bachelor's degree from a recognized university; are not members of any political party immediately before their appointment; have at least 20 years of experience in the field of accounting, revenue, engineering, law, development or research and are distinguished persons; have reached 45 years of age; and possess high moral character.^a In Mauritius, the ACA head must, at a minimum, have served as a judge or a magistrate or as an official in an anti-corruption agency in another country at an acceptable level of seniority.^b In Uganda, persons are eligible for appointment as Inspector General of Government only if they are citizens of Uganda, are persons of high moral character and proven integrity, and possess considerable experience and demonstrated competence and are of high calibre in the conduct of public affairs.^c

^aConstitution of Nepal of 2015, art. 238 (6).

^bMauritius, Prevention of Corruption Act, No. 5 (2002), sect. 19 (4).

^cConstitution of Uganda of 1995, sect. 223 (5).

46. In order to ensure that the criteria described above are met, several ACAs appoint their senior leadership through an open, transparent, competitive and participatory recruitment process.²⁰

Open recruitment processes in Burkina Faso, Indonesia, Latvia, Serbia and Slovenia

In Latvia, candidates for the position of Director of the Corruption Prevention and Combating Bureau are selected through an open recruitment procedure in which candidates are required to submit an application and assessed against a set of criteria, after which a shortlist of candidates is produced by a group of experts and candidates are examined by the National Security Council and interviewed by the Cabinet of Ministers, which submits a final recommendation to the Parliament for endorsement.^a

Slovenia also uses an open recruitment process in which the Chief Commissioner and Deputy Commissioners of the Commission for the Prevention of Corruption are appointed through an open application and interview procedure, which results in the recommendation of candidates to the President by a special board comprising representatives of the Government, the National Assembly, non-governmental organizations, the Independent Judicial Council and the Independent Council of Officials.^b

Similarly, the law in Burkina Faso provides for an open call for candidates for the position of head of the ACA, who is the Controller General of the State. An advisory board composed of nine representatives – three from the public sector, three from the private sector and three from civil society – vets the candidates before endorsement by the President of the Republic.^c

In Serbia, the Anti-Corruption Agency is led by a Board and a Director. Board members are nominated by nine different State authorities^d and then elected by the National Assembly. The Board then selects a Director through a public recruitment procedure in which applicants are assessed on the basis of key professional criteria designed to ensure that a non-political, professional person is selected.^e

Indonesia requires a comprehensive vetting process. During a recent selection process, 600 candidates from across the country were nominated following an open call and were subjected to multiple interviews (including interviews broadcast on television), competence and psychological tests and background checks. A board of nine people from different sectors appointed by the President oversaw the vetting and provided 10 names to Parliament, which chose five candidates for a final test before recommending candidates to the President for appointment.

^aLatvia, Law on the Corruption Prevention and Combating Bureau [2012], sect. 4; OECD, *Specialised Anti-Corruption Institutions*, p. 29; Lithuania, Special Investigation Service and Latvia, Corruption Prevention and Combating Bureau, "European Partners against Corruption Anti-Corruption Working Group report: common standards and best practice for anti-corruption agencies" (May 2008).

²⁰ Arjon Schütte, *The Fish's Head*.

^bSlovenia, Integrity and Prevention of Corruption Act, art. 9; and CAC/COSP/WG.4/2014/2, para. 61.

^cBurkina Faso, Organic Law No. 082-2015/CNT, arts. 33–34.

^dThe 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.

^eOECD, *Specialised Anti-Corruption Institutions*, p. 29.

47. In order to ensure that an ACA head demonstrates impartiality, integrity and neutrality throughout his or her term, good practice supports a recruitment process that requires demonstrated support from across the political spectrum. Good practice also suggests that the ACA head should be recommended and/or endorsed by both the ruling and opposition parties. The involvement of the opposition in selecting the head of an ACA reinforces its objectivity and impartiality, as the ACA will not exercise bias in favour of the ruling majority.

Broad political support for agency heads in New South Wales, Australia, Bhutan and the Republic of Korea

In Bhutan, the Constitution requires that the *Druk Gyalpo* (Head of State) appoint the Chair and members of the ACA from a list of names recommended jointly by the Prime Minister, the Chief Justice of Bhutan, the Speaker, the Chair of the National Council and the leader of the opposition party.^a In New South Wales, Australia, the responsible minister can propose nominees for Commissioner of the Independent Commission against Corruption, but the parliamentary joint committee responsible for overseeing the Commission has the power to veto any nominee.^b In the Republic of Korea, the appointment of commissioners to the Anti-Corruption and Civil Rights Commission involves all three branches of the Government, with the Chair and Vice-Chairs appointed by the President on the recommendation of the Prime Minister, three non-standing commissioners appointed by the National Assembly, three appointed on the recommendation of the Chief Justice and two appointed on the recommendation of civil society organizations.^c

^aConstitution of Bhutan of 2008, art. 27 (2).

^bAustralia, New South Wales, Independent Commission against Corruption Act 1988, No. 35, sect. 64A.

^cCAC/COSP/WG.4/2014/2, para. 60.

CONTINUITY (PRINCIPLE 5)

In the event of suspension, dismissal, resignation, retirement or end of tenure, all powers of the ACA head shall be delegated by law to an appropriate official in the ACA within a reasonable period of time until the appointment of the new ACA head.

Commentary

48. Experience has shown that in some countries, the work of an ACA has been severely impaired by the absence of leadership following the departure of one or more ACA heads (regardless of the reasons). This is especially the case when the law grants the head of an ACA key powers in relation to managing the agency or conducting investigations and/or prosecutions. Allocating those key oversight powers to an ACA head alone is a sensible accountability mechanism to ensure that mid-level or junior staff cannot wield the often considerable powers of the ACA without appropriate supervision. However, at the same time, the need for oversight must be balanced with the need for the ACA to perform effectively under its mandates in the event of prolonged absence of leadership.

Delegation by law

49. The absence of an ACA head may cause a significant problem, particularly when the agency is no longer able to exercise its key powers until a new appointment is made. To address the challenges posed by the absence of an ACA head, the law should explicitly provide for the delegation of the head's powers to the next highest-ranking official in the agency. Many ACA laws already provide for such delegation.

Automatic replacement of the agency head by law in various countries

In New South Wales, Australia, Bhutan, Botswana, Burkina Faso, Cameroon, Eswatini, Madagascar, Malawi, Namibia, the Philippines, Sierra Leone, Slovenia, Spain, Yemen and Zambia, the deputy chair or one of the commissioners of the ACA automatically replaces the head in his or her absence.^a

^aArjon Schütte, *The Fish's Head*, p. 26.

All powers

50. Even if an interim head is automatically put in place or a process for timely replacement is provided, it is important to clarify the powers of such an interim head. In some instances, interim heads may have only caretaker powers, which may not be sufficient and, as a result, may impair the day-to-day functioning of the agency. Therefore, an interim head should be able to exercise the same operational powers as an ACA head. To avoid any improper use of such powers, it is important

to underline that the ACA would continue to operate under its usual external accountability mechanisms (see principle 14), such as judicial and parliamentary oversight.

Appropriate replacement official for the head of the agency

51. The law should stipulate who is eligible to replace an ACA head on a temporary basis. Good practice suggests that no civil servant from outside the ACA should be eligible, even on an interim basis; for example, an officer of the ministry of justice should not be slotted in as a commissioner of an independent commission against corruption. The person should come from within the ACA and have sufficient seniority and expertise to qualify for the role in his or her own right.

Replacement officials to lead agencies in Mauritius, Nepal and Slovenia

In Mauritius, the deputy head of the ACA automatically takes over in the absence of the Director General. If the deputy head is not available, the Director of Investigations steps in, in accordance with the established institutional hierarchy, but can serve as interim head for a maximum of six months. In Slovenia, a Deputy Commissioner can replace the Chief Commissioner, but only for the length of time remaining in the Chief Commissioner's term. In Nepal, a group of Commissioners leads the ACA, and any of them can take up the position of Chair as necessary, but experience has shown that replacement can still take a long time.

Replacement within a reasonable period of time

52. Where delegation of the ACA head's powers is automatic and enabled by law, delegation can occur immediately upon the official absence of the ACA head. However, in some cases, the law does not require delegation to an existing ACA commissioner or staff member, but calls for a replacement to be identified. Any such provision should require such a replacement to be identified within a reasonable period of time, which should be explicitly stated in the law, for example within no more than three months.

Time frame for replacement of agency leadership in Bangladesh

In Bangladesh, the Anti-Corruption Commission Act states that, subject to the provisions of the Act, which require the appointment of the ACA head to be made following recommendations from a selection committee, if any Commissioner dies, resigns or is removed from his or her post, the President shall, within 30 days after the post has become vacant, appoint a competent person to the post of Commissioner.⁹

⁹Bangladesh, Anti-Corruption Commission Act, 2004, sect. 11.

53. Failure to meet such a deadline could result in automatic delegation to an existing commissioner or a staff member, or, alternatively, if the deadline is not met, interested parties could seek a court order for a recruitment process to be undertaken.

Immediate replacement of agency leadership required by law in Togo

In Togo, the law establishing the High Authority for Preventing and Combating Corruption and Related Offences provides that any member of the High Authority whose mandate comes to an end for whatever reason must be replaced immediately by the same authority that appointed that member and for the remaining duration of the mandate.⁹

⁹Togo, Law No. 2015-006 of 28 July 2015, art. 7.

REMOVAL (PRINCIPLE 6)

ACA heads shall have security of tenure and shall be removed only through a legally established procedure equivalent to the procedure for the removal of a key independent authority specially protected by law [such as the Chief Justice].

Commentary

54. Heads of ACAs can often become victims of their own success, with successful ACA investigations and prosecutions sometimes leading to political backlash against an agency or its leadership.²¹ It is critical to protect ACA heads from such responses by ensuring both the security of their tenure and the existence of legal processes for removal that are based on a narrow set of actionable offences and a non-political impeachment process.

Security of tenure

55. One mechanism to help ensure that ACA heads are not subject to reprisals for successful work accomplished by the ACA is to afford them security of tenure. This means that the ACA head's period in office is set out in the law and cannot be modified, except in a specific set of circumstances that are also prescribed by law (see also paras. 57–62). The best-known and most common example is in relation to the head of the judicial branch, who is usually protected from executive or legislative interference by being given security of tenure through the constitution. Similar provisions can be used to protect the terms of the ACA leadership. At the 2014 session of the United Nations Open-ended Intergovernmental Working Group on the Prevention of Corruption, it was noted that many States, including Morocco, Nigeria, the Republic of Korea, Slovenia, the State of Palestine and Tunisia, had

²¹See also the section on immunity (principle 8).

emphasized the importance of security of tenure for members of corruption prevention bodies in protecting independence.²²

Security of tenure in Ghana

In Ghana, the Commissioner and two Deputy Commissioners of the Commission on Human Rights and Administrative Justice enjoy the same terms and conditions of service as Justices of the Court of Appeal and High Court, respectively, including security of tenure until the ages of seventy and sixty-five.^a This enables the Commissioner and Deputy Commissioners to make decisions impartially, without fear of losing their jobs.^b

^a Constitution of Ghana, chap. 18, sect. 223; and Ghana, Commission on Human Rights and Administrative Justice Act, No. 456 of 1993, sect. 4.

^b Deepa Iyer, "Earning a reputation for independence: Ghana's Commission on Human Rights and Administrative Justice, 1993–2003" (Princeton, New Jersey, Princeton University, Innovations for Successful Societies, 2011), p. 3.

56. In many countries, mandates are issued for a limited time period, such as five to seven years. Ideally, the time frame should not be too short (i.e., three years or less) because investigating complex corruption cases requires time and a shorter period will create a constant state of flux for the ACA. Security of tenure implies a sufficiently long mandate, which may be renewable or non-renewable. The 2014 report of the United Nations Open-ended Intergovernmental Working Group on the Prevention of Corruption cited above suggests any period from five to nine years, depending on the local context.²³

Non-renewable terms for agency heads in Burkina Faso and Kuwait

In Burkina Faso and Kuwait, the legislatures opted for five-year non-renewable terms in order to ensure that the heads of the agencies would not try to ingratiate themselves with the appointing authorities with the aim of renewing their mandates.

Legally established procedure

57. In order to ensure the accountability of ACA heads, dismissal processes should be included within the legal framework governing the ACA. Such a process should be permitted only in a very narrow set of circumstances as set out in the law, involve a right of reply against the alleged grounds and include a multilayered process involving actors outside the executive branch, such as members of the body itself, the legislature or the judiciary, or a multi-stakeholder supervisory board. Most important, the process must be followed in practice. In a number of countries, legal processes for dismissal have not been followed, resulting in litigation and disruption of the work of the ACA.

²² CAC/COSP/WG.4/2014/2, para. 63.

²³ Ibid.

58. The grounds for dismissal are commonly set out in the legal framework that establishes the ACA. Such grounds may cover issues of misconduct and incompetence. The law should ensure that heads accused of engaging in misconduct have the opportunity to respond and that accusations must be proved in order to minimize opportunities for individuals to use the dismissal process to target successful ACA heads.

Grounds for dismissal of agency heads in Maldives, Mali and Mauritius

In Mauritius, the Director General of the Independent Commission against Corruption can be removed only in cases where the Director General has been guilty of such gross negligence, irregularity or misconduct that his or her appointment ought to be terminated, or the Director General is unable to discharge the functions of the office, whether such inability arises from infirmity of body or mind or any other cause.^a In Maldives, the head of the ACA can be removed only on the ground of misconduct, incapacity or incompetence.^b In Mali, the President and members of the Central Office for Combating Illicit Enrichment can be dismissed only by the President for gross negligence or absolute impediment, with the Office itself mandated to rule on such cases and advise the President.^c

^aMauritius, Prevention of Corruption Act, No. 5, sect. 23 (1).

^bConstitution of Maldives of 2008, art. 207 (a).

^cMali, Ordinance No. 2015-032/P-RM, arts. 14–15.

59. Good practice demonstrates that any allegations concerning an ACA head's impropriety on the basis of the grounds described in the law should be provided in writing with sufficient detail.

Requirement of a written reasoned opinion for dismissal of agency members in Togo

In Togo, the decision to dismiss a member of the ACA is taken in the Council of Ministers following a reasoned opinion issued by the President of the Supreme Court.^a

^aTogo, Law No. 2015-006 of 28 July 2015, art. 7.

60. The allegations should be investigated and a determination should be made through some form of quasi-judicial process.

Quasi-judicial process of removing agency members in Jamaica and Saint Lucia

In both Jamaica and Saint Lucia, the law permits removal of a member of the Integrity Commission, including its head, only by the Governor General on the

advice of a three-member tribunal of former judges, which must determine whether to recommend that the Commissioner be removed from office for inability or for misconduct.^a

^aConstitution of Saint Lucia of 1978, art. 118 (7); and Jamaica, Integrity Commission Act, sect. 15 (1–2).

61. The ACA head should also be given a written copy of the allegations and afforded sufficient opportunity to defend himself or herself publicly prior to any decision. Preferably, it should not be permissible to launch an appeal once an ACA head has been cleared as a result of a tribunal or judicial process. Appeals in this context serve little purpose in terms of additional accountability but could be used improperly to undermine the authority of an ACA head.

62. Where the legislature is involved, the law should require a special majority to ensure that all parties endorse the decision to dismiss the ACA head. Permitting the unilateral dismissal of an ACA head by the executive branch or with only a simple majority vote of the legislature leaves open the possibility for individuals to misuse dismissal powers.

Requirement of parliamentary approval for dismissal of agency leadership in Nepal and Sri Lanka

In Sri Lanka, a member of the Commission to Investigate Allegations of Bribery or Corruption can be removed only “by an order of the President made after an address of Parliament supported by a majority of the total number of Members of Parliament (including those not present) has been presented to the President for such removal on the ground of proved misconduct or incapacity”, with notice of such a resolution first to be made by not less than one third of the total number of Members of Parliament after setting out the full particulars of the alleged misconduct or incapacity.^a In Nepal, the head of the Commission for the Investigation of Abuse of Authority may be removed only following a three-step impeachment process in which an impeachment committee of 11 members is set up by Parliament to advise *(a)* whether the Commissioner has violated the Constitution, acted incompetently, misbehaved or failed to discharge his or her duties in good faith, after which *(b)* a motion for impeachment can be made by at least a one-fourth majority of the total number of members of the House of Representatives, after which *(c)* the motion must be considered by both houses of the federal Parliament and passed by a two-thirds majority of a joint session.^b

^aSri Lanka, Commission to Investigate Allegations of Bribery or Corruption Act, No. 19 (1994), part I, sect. 5 (a).

^bConstitution of Nepal of 2015, art. 101.

III. Human resources

63. Like any institution, an ACA is only as good as its staff. The employees' conduct will determine the success of the ACA. Ethical conduct is essential for ACAs so that they can lead by example in the fight against corruption. ACAs also need to have clear rules and procedures in place for their staff, as well as disciplinary mechanisms to hold them accountable. At the same time, ACA employees should be protected from outside attacks, which are all too frequent when they are involved in combating corruption. Finally, ACAs should have authority over their employees to ensure they have the best-qualified staff to help implement their complex mandates. This chapter focuses on the following principles: ethical conduct (principle 7), internal accountability (principle 13), immunity (principle 8) and authority over human resources (principle 10).

ETHICAL CONDUCT (PRINCIPLE 7)

ACAs shall adopt codes of conduct requiring the highest standards of ethical conduct from their staff and a strong compliance regime.

Commentary

64. ACAs should regulate the ethical conduct of their staff. Moreover, accountability mechanisms are needed to ensure compliance with ethical standards.²⁴

Code of conduct

65. Article 8 (2) of the United Nations Convention against Corruption specifically calls on States parties to endeavour to apply, within their own institutional and legal systems, codes or standards of conduct for the correct, honourable and proper performance of public functions. This requirement applies equally to ACAs and other public bodies performing such functions. Codes of conduct provide the rules that guide public servants while performing their responsibilities and specify the

²⁴These issues are discussed further in the sections on internal accountability (principle 13) and external accountability (principle 14).

boundaries of expected behaviour and standards for public servants.²⁵ In 1997, the General Assembly, in its resolution 51/59, endorsed the International Code of Conduct for Public Officials, which continues to provide useful guidance on the minimum content of such a code. In 2007, the Anti-Corruption and Transparency Experts Working Group of the Asia-Pacific Economic Cooperation also endorsed a model set of conduct principles for public officials.²⁶

66. An ACA code of conduct is usually designed to complement and/or extend an existing public service code of conduct in order to reflect the special circumstances within which ACA leaders and staff discharge their duties. Many ACAs have introduced codes of conduct for both ACA leadership and ACA staff.

Codes of conduct for agency staff in Bhutan, Indonesia, Mauritius and Tunisia

In Indonesia, the Corruption Eradication Commission has separate codes of conduct for its staff and its leadership. In Mauritius, the leadership of the Independent Commission against Corruption developed a staff code of conduct, along with supplementary materials, including an investigative handbook.^a The Commission reinforced staff integrity by ensuring that staffers were always reminded about integrity through induction training for new staff, the investigative handbook and periodic training sessions, all of which covered the code of conduct.^b In both Indonesia and Mauritius, ACA leaders committed themselves to an additional set of ethical standards that are stricter than the codes for staff.^c In Bhutan, the code of conduct of the Anti-Corruption Commission explicitly applies to both management and staff and sets out ACA service obligations towards the Government and the public.^d In Tunisia, the National Anti-Corruption Authority has a “moral charter” that applies both to staff and to people recruited on contract. The charter is complemented by regimes on asset disclosure and conflicts of interest that also apply to commissioners and staff.

^aGabriel Kuris, “From underdogs to watchdogs: how anti-corruption agencies can hold off potent adversaries” (Princeton, New Jersey, Princeton University, Innovations for Successful Societies, 2013), p. 7.

^bKuris, “From a rocky start to regional leadership”, p. 8.

^cKuris, “From underdogs to watchdogs”, p. 8.

^dBhutan, Anti-Corruption Commission, “Ethical Code of Conduct” (July 2008).

67. To ensure compliance with the code of conduct, it is good practice to have ACA staff sign a copy of the code upon taking office and to provide them with continuing training on the code.

²⁵Ethelbert Chinedu Nwokorie and Olli-Pekka Viinamäki, “Legitimacy building of anti-corruption agencies in five countries”, paper presented at the OECD Global Anti-Corruption and Integrity Forum, Paris, 30–31 March 2017, p. 8.

²⁶OECD, Middle East and North Africa/OECD Governance Programme, *Implementing a Code of Conduct for the Public Sector in Jordan: OECD Joint Learning Study – Final Report* (July 2010), annex E.

68. While any code of conduct should bind both ACA leadership and staff, it should also be designed to protect internal ACA whistle-blowers, particularly if there is an absence of national whistle-blower legislation. The agencies themselves need to be held to the highest standards of accountability, and where the leaders or staff do not meet such standards, the agency must have channels and protections that enable concerned staff to make confidential complaints and have them handled properly.

Highest standards

69. Article 8 of the Convention requires each State party to promote the values of integrity, honesty and responsibility among its public officials. As champions of accountable and non-corrupt conduct, ACA leaders and staff are expected to comply with the very highest standards of conduct and must take care to avoid both actual and perceived acts of misconduct. In practice, ACA codes of conduct may either define minimum rules that personnel must follow, for example by requiring regular disclosures of conflicts of interest and of gifts received (“compliance codes”), or they may define high standards to observe (“aspirational codes”). A compliance code would, for example, require staff to refrain from engaging in the investigation of corruption cases in which they personally know one of the suspects, while an aspirational code would broadly call on staff to avoid all conflicts or potential conflicts of interest. Codes of conduct may include both types of provisions.

70. Recognizing the wide variety of mandates performed by ACAs, there is no model code of conduct that can be applied to all institutions. However, some minimum standards include the following: requiring regular asset disclosures, at least for senior ACA management; requiring regular disclosures of conflicts of interest, including a specific declaration and/or recusal where an individual case raises a conflict issue; instituting a policy in relation to the receipt of gifts (some ACAs require that no gifts be accepted at all, while others allow gifts up to a certain monetary limit, though the recipient is still required to declare them); prohibiting employment with organizations implicated in ACA cases for a minimum period (i.e., restraint of trade); prohibiting the use of confidential information for improper purposes; prohibiting membership in political parties and extremist organizations; and prohibiting sexual harassment. While some of those requirements may already exist in legislation, including them in simple language in an ACA code of conduct helps to strengthen the ethical framework within which staff undertake their duties.

71. Registers of assets, interests and conflicts should be maintained and regularly updated, and good practice suggests that they should also be published, at least for senior ACA management. If they are made public, redactions to protect rights to privacy and to prevent the use of information for improper purposes should be considered. While many of the standards described above may be common across the public sector, ACAs are required to uphold the highest standards of integrity and must therefore usually have a “revolving door” policy, with cooling-off periods for staff, to ensure ethical conduct and to prevent potential ACA targets from manipulating staff.

Cooling-off periods for agency staff in Hong Kong, China, Malaysia and Mali

The Independent Commission against Corruption in Hong Kong, China, and the Malaysian Anti-Corruption Commission both include cooling-off periods of up to two years in staff contracts. In Mali, the Board and Secretary-General of the Central Office for Combating Illicit Enrichment, for a period of five years following the termination of their employment, may not, under any circumstances, become employees or receive remuneration in any form or in any capacity whatsoever from a person whose case they have investigated or, after the termination of their duties and for the same duration, in any form whatsoever, have direct or indirect ties to a person whose file has been examined by the Office.⁹

⁹Mali, Ordinance No. 2015-032/P-RM, art. 19.

Strong compliance regime

72. Article 8 (6) of the Convention calls upon States parties to consider taking, in accordance with the fundamental principles of their domestic law, disciplinary or other measures against public officials who violate the relevant codes or standards of conduct. Codes of conduct are unlikely to affect staff behaviour without the threat of an overarching compliance or sanctions regime. When developing a code of conduct, it is important to integrate some form of compliance regime, whether it is tied to an existing public service disciplinary system or to a separate, ACA-specific internal disciplinary system. More details on such systems are included in the next section on the principle of internal accountability.

Disciplinary systems for agency staff in Bhutan and Malaysia

The code of conduct of the Bhutan Anti-Corruption Commission identifies the Chair of the Commission as responsible for monitoring compliance with and enforcement of the code of conduct. An annual performance appraisal is to be used as an instrument for monitoring compliance. Any breach of the code by any employee, irrespective of the degree of the breach, shall result in appropriate action. The code of conduct establishes an ethics committee to investigate matters reported or forwarded to it concerning any breaches of the code and to take action accordingly, and it sets out both a penalties regime (for minor, major and repeat offences) and an appeals process. In Malaysia, any alleged breach of the code of conduct and ethics of the Anti-Corruption Commission is investigated by staff from the Commission's Excellence and Professionalism Division, which is tasked with monitoring the behaviour and ethical conduct of officers. The outcome of the investigation by the Division is then presented to an independent complaints committee for a decision in accordance with the law on the Anti-Corruption Commission.

73. Ideally, disciplinary regimes should also include some form of public accountability mechanism, namely, a requirement to publish a report (whether as part of the agency's regular annual report or a separate report) on breaches of the code and the agency's response. Where potential breaches of the code by senior leadership of the ACA are concerned, involving external parties may be recommended.²⁷

INTERNAL ACCOUNTABILITY (PRINCIPLE 13)

ACAs shall develop and establish clear rules and standard operating procedures, including monitoring and disciplinary mechanisms, to minimize any misconduct and abuse of power by ACAs.

Commentary

74. Ethical leadership is critical for creating an enabling environment for good behaviour in society. ACAs should serve as role models for values of integrity, transparency and accountability. Therefore, ACAs need to remain vigilant about upholding such values among their staff. Moreover, the work of ACAs can be complicated, highly sensitive and have considerable legal consequences for legal and natural persons targeted by their policy recommendations, investigations and/or prosecutions. As such, internal accountability frameworks are essential for ensuring proper conduct by ACAs.

Clear rules and standard operating procedures

75. ACAs are often granted substantial powers, including in relation to the search for and seizure of assets and property, surveillance, interrogation and arrest. It is essential that such powers be properly exercised, as their abuse can both cause personal harm to targets of investigations and undermine the credibility of the ACA. That risk is exacerbated in countries where an ACA may have only a small specialist investigative cadre and rely on less experienced staff for support. Good practice indicates that risks related to staff misconduct and abuse of power can be mitigated through the development of clear rules and standard operating procedures, as well as regular training and capacity development aimed at ensuring that staff have an extremely clear understanding of their roles, powers and duties.

Standard operating procedures for investigations in Indonesia, Mauritius and Sri Lanka

In Mauritius, the newly revitalized Independent Commission against Corruption introduced an investigation manual to formalize procedures to assist inexperienced prosecutors, while the ACA head conducted ad hoc court-oriented training activities to address shortcomings observed in courtroom performance. Training

²⁷ See also the sections on removal (principle 6) and external accountability (principle 14).

Standard operating procedures for investigations in Indonesia, Mauritius and Sri Lanka (*continued*)

for Commission prosecutors was conducted by means of mock trials, enabling investigators to practise testifying in court. To institutionalize training as a continuous process, the ACA head also established a standing capacity-building team.^a In Sri Lanka, the Commission to Investigate Allegations of Bribery or Corruption developed a detailed *Investigations Guidelines and Prosecution Manual* specifically to provide clear guidance to officers of the Commission on how to discharge their duties professionally. The Indonesian Corruption Eradication Commission also invested heavily in developing standard operating procedures and internal guidance and undertook substantial development of internal staff capacity to ensure that staff performed their duties properly.^b It has an anti-corruption learning centre that develops curricula and syllabuses to educate and train its staff. It is currently developing various training modules on corruption investigations for beginner, intermediate and advanced levels. The Commission has also produced templates for common investigation documents and runs refresher training courses for staff on the legal use of their extensive coercive powers.

^aKuris, "From a rocky start to regional leadership", p. 7.

^bKuris, "From underdogs to watchdogs", p. 5.

76. Standard operating procedures are also important for handling complaints, in particular for selecting cases for the ACA to pursue through investigations. Politicians tend to call any investigation against them a political "witch-hunt" in order to defend themselves. ACAs need to have proper internal procedures to handle such complaints and to withstand any criticism or false accusations of political bias.

Complaint evaluation procedures in Bhutan and Senegal

In Bhutan, the Anti-Corruption Commission produced a detailed policy and procedures manual on complaint management to guide staff on how to proceed in all stages of processing a complaint and how to engage with the parties involved. An internal framework is used to assess incoming complaints against objective criteria. Every complaint is assessed against that framework before it is submitted to a committee that decides, on the basis of an objective initial evaluation, whether it merits further investigation or any other course of action. In Senegal, the National Office against Fraud and Corruption has adopted a similar process for evaluating complaints before any further investigation can be ordered.

77. In some countries, ACAs have procedures in place to register conflicts of interest to adequately manage potential bias among ACA staff. Furthermore, strict security protocols are sometimes in place to ensure that ACA staff handle confidential information only after passing certain security tests.

Security protocols in Croatia

In Croatia, the staff of the Office for the Suppression of Corruption and Organized Crime were required to pass security screenings and receive special certification to handle confidential information, and the Office instituted strict protocols for managing information and working in a closed, high-security computer network.^a

^aKuris, "Cleaning house", p. 8.

Monitoring mechanisms

78. In order to ensure compliance with rules and standard operating procedures, it is important for ACAs to develop monitoring mechanisms that effectively track the activities and performance of ACA staff, in particular their exercise of powers under the law in investigations and prosecutions, as well as their efforts to engage other stakeholders in the work of the ACA. Monitoring is a key method of ensuring oversight of staff activities and behaviours and may also have a deterrent effect by sending a message to staff that management will notice ineffective conduct or misconduct. Performance management systems also contribute to the dual purposes of tracking both the outputs of staff (for bonuses and promotions) and their daily activities and stakeholder engagement. Such systems can provide important information for ACAs in disciplinary proceedings against staff. Experience from ACAs indicates that whistle-blower channels for ACA staff are also important to any monitoring framework in order to ensure that staff are empowered to make complaints regarding alleged internal wrongdoing and are protected from retaliation.

Monitoring of agency staff in Hong Kong, China, Indonesia, Latvia and Slovenia

In Latvia, the law specifically requires that the head of the ACA establish an evaluation committee to assess the activities of the agency's employees at least every two years. The results of the evaluation can then be used to make decisions regarding unsuitability for the position of agency officials and employees and regarding transfer to other positions, and as the basis for the determination of salaries.^a In Slovenia, the ACA is responsible for supporting public bodies in producing integrity plans, which are underpinned by a self-assessment of corruption risks; at the same time, the ACA has its own integrity plan. The plan is monitored by an internal ethics commission that issues opinions on conduct. In Indonesia, the Corruption Eradication Commission has a sophisticated e-monitoring system that tracks workers' performance by requiring staff members to use an online system to report the time they spend on daily tasks; it uses a balanced-scorecard system for performance management and has instituted performance bonuses. The Commission also launched an online whistle-blower system to handle anonymous corruption

Monitoring of agency staff in Hong Kong, China, Indonesia, Latvia and Slovenia (*continued*)

complaints against its own staff members.^b Both the Corruption Eradication Commission in Indonesia and the Independent Commission against Corruption in Hong Kong, China, have video cameras installed on their premises for security purposes and to record interviews conducted by investigative staff. The Independent Commission against Corruption also tracks all activity performed on work computers, and staff are prohibited from taking their computers or soft copies of their files out of the office.

^aLatvia, Law on the Corruption Prevention and Combating Bureau, sect. 6.

^bKuris, "From underdogs to watchdogs", p. 7.

Disciplinary mechanisms

79. Disciplinary procedures need to be clearly articulated, practical and workable, and understood by staff. Such mechanisms should be described in a code of conduct and/or internal human resources manual. Any disciplinary process should require that the ACA notify the staff member and afford staff the right to be heard in relation to any allegation or complaint. Common practice suggests a process of warnings for minor breaches and/or first offences, with an escalating scale of disciplinary actions according to the seriousness of the offence. An appeals process should also be available to staff in relation to disciplinary or dismissal proceedings.

Disciplinary investigation mechanisms in Bhutan, Hong Kong, China, Indonesia and Nigeria

In Hong Kong, China, an internal investigation and monitoring unit called the L Group is responsible for investigating breaches of staff discipline, allegations of corruption against the staff of the Independent Commission against Corruption and non-criminal complaints against the Commission or its staff.^a The small unit operates in relative secrecy, as part of a much larger operations department, and is empowered to apply the full range of the Commission's investigative techniques to its own staff, including electronic and physical surveillance. Once the group completes an investigation, it reports to the Directorate, which may send the file on to the external Complaints Committee for a determination. In Bhutan, an ethics committee comprising members of the Human Resources Committee of the Anti-Corruption Commission is mandated to investigate matters reported or forwarded to it concerning any breach of the code of conduct and to take action accordingly.^b In Indonesia, the Corruption Eradication Commission has a Supervisory Board that handles all complaints against staff and Commissioners (whether the complaints come from staff members or the public). The Board reviews and investigates complaints, including through inquiries, witness testimonies, interviews with supervisors and surveillance of

staff activities, if necessary. The Board then takes decisions based on a quasi-judicial process in which charges are presented to the employee, who has an opportunity to defend himself or herself before the Board makes a final determination. In Nigeria, all internal complaints in the Economic and Financial Crimes Commission go to the Directorate of Professional Responsibility for a preliminary investigation. If a complaint is substantiated, the officer involved is put on suspension while a full investigation panel examines the complaint before submitting its findings to the Chair of the Commission. The Chair will refer complaints relating to criminal acts to the police, while non-criminal offences are referred to the Appointment, Promotion and Disciplinary Committee.

^aHong Kong Independent Commission against Corruption, "Checks and Balances, Internal Monitoring". Available at www.icac.org/hk.

^bBhutan, Anti-Corruption Commission, "Ethical Code of Conduct", p. 8.

IMMUNITY (PRINCIPLE 8)

ACA heads and employees shall have immunity from civil and criminal proceedings for acts committed within the performance of their mandate. ACA heads and employees shall be protected from malicious civil and criminal proceedings.

Commentary

80. In order to ensure that ACA staff can efficiently discharge their duties, it is important that they be personally protected from lawsuits, whether criminal or civil, for acts legitimately undertaken as part of their work. This is a common protection afforded to staff of regulatory agencies. Disgruntled targets of investigations or other individuals affected by the work of an ACA should not be able to use legal proceedings in order to inhibit staff or punish them for doing their jobs. Immunity shields staff from unwarranted interference.

Immunity from civil and criminal proceedings

81. Immunity from both civil and criminal proceedings is important. While criminal proceedings are generally instituted by law enforcement authorities, any person aggrieved by the actions of an ACA official can institute a civil action. Both types of proceedings can be problematic. Criminal proceedings can be politically motivated, and both criminal and civil proceedings may be initiated by corrupt persons (legal or natural) who are under investigation and have the necessary financial means. This makes immunity protections very important, as ACA staff would otherwise be exposed to the risk of considerable costs in having to defend themselves in such cases, which could be used by civil litigants to intimidate ACA staff.

82. In such cases, the law will usually require that the ACA head or employee was acting in good faith in order to ensure ACA accountability.

Immunity for agency staff in New South Wales, Australia, Bangladesh and Mali

In Bangladesh, the Anti-Corruption Commission Act of 2004 states that if any person is affected or is likely to be affected by any action taken in good faith in the discharge of duties under the Act, then neither the Commission nor any Commissioner, officer or employee of the Commission shall be liable to action under civil or penal codes or otherwise. In New South Wales, Australia, the law provides for comprehensive protections, not only for all staff of the Independent Commission against Corruption if the matter or thing was done in good faith for the purpose of executing that or any other Act, but also for legal practitioners assisting the Commission and witnesses. The law goes further to state that no criminal or civil liability (apart from the Act) attaches to any person for compliance, or purported compliance in good faith, with any requirement made under the Act. In Mali, members and employees of the Central Office for Combating Illicit Enrichment may not be prosecuted, investigated, arrested, detained or judged in connection with the opinions they issue or for the actions or decisions they take in connection with exercise of their mission.

83. Good faith may be established on the face of the evidence, for example because an ACA official can show that he or she was acting under the specific legitimate direction of a superior, was operating under a specific provision of the law or was given clear and written approval for his or her actions. ACA leadership and staff must keep very clear records of what they have done and why, including the specific legal or other mandate under which they were acting, in order to defend their conduct. One ACA reported that one of its commissioners had been forced to defend himself in a court action because he was unable to prove the good faith of his actions in a case where he had met with private sector stakeholders but had not kept a clear record of the date, purpose and content of the meetings.

84. Once good faith is established, the law should completely protect and support, including financially, the ACA head and staff. Although immunity may be available according to the law, it may still be necessary to engage in court proceedings to invoke the immunity if a case is filed. Under those circumstances, once good faith is established by the ACA head or staff, the costs of invoking the immunity and/or defending the case will usually be borne by the ACA as an institution.

Immunity for acts committed within the performance of a mandate

85. A salient element in determining whether immunity will attach to the actions of an ACA official is whether the act was carried out in the performance of his or

her mandates. This requirement protects ACA leaders and staff from being personally charged or sued for actions that were taken as part of their employment. Conversely, where ACA employees can be shown to have acted outside of their legal or authorized mandates, they will lose the benefit of immunity. For example, if it is proved that a staff member improperly used the agency's resources or powers for personal reasons, the law will no longer protect that staff member.

86. It is also important to note that the immunity provided is intended to protect ACA staff personally from criminal or civil proceedings. This does not necessarily mean that the ACA itself will be immune from civil or criminal litigation, but focuses on the need to protect staff from having their own personal liberty and assets put at risk because of their work. In many countries, however, the ACA itself is also given institutional immunity.

Immunity of the agency in Malaysia

The Malaysian Anti-Corruption Commission Act provides immunity to the Government of Malaysia, the Anti-Corruption Advisory Board, the Commission and its staff, as well as any person lawfully acting on behalf of the Commission, such as private investigators or consultants, for acts or omissions done in good faith under the auspices of the law.^a

^aMalaysian Anti-Corruption Commission Act 2009, sect. 72.

Protection from malicious proceedings

87. In addition to including protections against civil or criminal proceedings for acts carried out in the performance of a mandate, the law should extend protections for ACA staff to acts allegedly committed outside the performance of their mandate if the proceedings are reasonably deemed to be brought maliciously against one or more staff members. Indeed, it is not unusual to see ACA staff who are investigating sensitive cases attacked by means of criminal proceedings for offences they did not commit in order to destabilize those staff members and have them temporarily or permanently suspended. Individuals have unfairly accused ACA staff of crimes committed outside their mandates. While ACA staff should not be immune from investigation and prosecution for alleged crimes, it is appropriate, depending on the circumstances, to offer legal and financial support to ACA staff to allow them to defend themselves against malicious prosecutions. Disaffected targets of investigations may seek to use legal proceedings as a method of intimidating ACA staff to prevent them from investigating or prosecuting certain acts. In order to discourage such attempts, the law may even provide for higher penalties where a court finds that ACA staff were a target of malicious prosecution.

AUTHORITY OVER HUMAN RESOURCES (PRINCIPLE 10)

ACAs shall have the power to recruit and dismiss their own staff according to clear and transparent internal procedures.

Commentary

88. Staffing is crucial to ensuring the operational effectiveness of ACAs. Modern human resources management considers ACAs should have control over recruitment, management, discipline and dismissal processes in order to enable them to manage staff flexibly on the basis of performance outputs. ACA staff members are often recruited as members of the civil service. However, strict adherence to civil service rules may restrict the capacity of ACAs to offer benefits packages that are attractive enough to recruit the experienced staff often required for ACA operations.²⁸ Moreover, basing recruitment solely on successful civil service test scores limits the ability of ACAs to recruit individuals with the requisite specialized knowledge and skills.

Power to recruit and dismiss

89. Good practice suggests that ACAs should be given the power to recruit and dismiss their own staff. The relevant provisions may state that staff service is limited to work under the ACA. This will also prevent ACA staff from being transferred to other public service agencies – a problem for ACAs, which often rely on specially trained staff with niche anti-corruption skills. It also protects the agencies' independence, as the public service ministry or commission cannot threaten staff with its own disciplinary procedures. Multifunctional ACAs with comprehensive mandates tend to be supported by legislation that gives them powers over recruitment and discipline of their own staff. This reflects the common practice of establishing such ACAs as separate entities, independent of government.

Power to appoint, dismiss and discipline staff in Western Australia, Bhutan and Fiji

In Bhutan, the Anti-Corruption Act of 2011 states that the Anti-Corruption Commission shall have independence and powers to regulate the appointments, management and dismissal of its staff, other than a Commission member, in accordance with the Civil Service Act.^a In Fiji, the Commissioner and his or her Deputy have the authority to appoint, remove and discipline all staff (including administrative staff) in the Commission.^b In the state of Western Australia, the law gives the Corruption and Crime Commission powers to determine remuneration and other terms and conditions of service of staff, to remove, suspend and discipline staff and to terminate their employment.^c

^a Bhutan, Anti-Corruption Act 2011, sect. 8 (2).

^b Constitution of Fiji, 2013, sect. 115 (10).

^c Australia, Western Australia, Corruption, Crime and Misconduct Act 2003, sect. 179 (4).

²⁸ See the section on remuneration (principle 9).

90. The power to recruit staff gives ACAs the flexibility to design positions in such a way as to recruit candidates with the most appropriate skill sets and enables the ACA to set high standards for its recruits, for example, in terms of integrity.

Stringent recruitment procedures in Guatemala and Peru

The International Commission against Impunity in Guatemala required all police officers and staff working for the Commission, including the Commissioner, to undergo a polygraph test prior to their appointment. That allowed the Commission to establish a strong law enforcement component with high standards of honesty and integrity. The Commission continued to use polygraph tests on its staff on a regular basis (every three months) to avoid any problems or lapses during their employment at the Commission. As discussed under the heading “Monitoring mechanisms” above, some ACAs have also used their autonomy in human resources management to develop robust appraisal systems that reward staff with annual bonuses for good performance. In Peru, positions at the Secretariat of Public Integrity are advertised online; the process is transparent, and all interested professionals can apply. Candidates need to pass three evaluation stages (review of profile, knowledge examination and oral interview) to be selected.

91. Preferably, ACAs will be allowed to use a variety of contracting modalities to enable flexible human resources management, including short-term contracts, long-term contracts or permanent civil service contracts. Some agencies value the use of short-term contracts to employ staff, especially if such arrangements make it possible to offer better salary and service conditions. At the same time, short-term contracts afford ACAs the flexibility to dismiss underperforming staff more easily. Other ACAs have raised concerns regarding insecurity for staff and therefore prefer different contract modalities to attract qualified employees. Each ACA needs to consider the best employment options in the context of its local labour market.

Agency staff on contracts in Hong Kong, China, Jamaica and Mauritius

The Independent Commission against Corruption in Hong Kong, China, initially offered a special allowance to attract quality staff but dispensed with it in 2000, as the Commission had become a preferred employer. The Commission now employs most staff on 30-month rolling contracts and usually offers them two terms, for a total of five years. At the end of each contract, the staff member receives a gratuity of 25 per cent of the contract value, subject to satisfactory performance, but the Commission can also terminate the contract relatively easily if it finds problems with staff performance. Similarly, in Jamaica, the Integrity Commission employs most staff on contracts, as government salaries are not sufficiently competitive to attract specialized staff such as accountants. At the end of their contracts, staff are also given a lump sum in lieu of a pension scheme. The Independent Commission against Corruption in Mauritius opted to use mostly short-term staff contracts when it first began operating, as those contracts gave the Commission more flexibility to offer attractive salary packages and recruit specialized expertise from outside the Commission.

92. Many ACAs have also relied on secondments as part of their human resources strategy, both initially and to fill positions on an ongoing basis.

Secondment of staff in Hong Kong, China, Indonesia, Malaysia, Mauritius and Nigeria

The Malaysian Anti-Corruption Commission has the power to demand that government departments second experienced staff to the Commission, even going so far as to name staff members and demand their release to the Commission. Mauritius has a similar provision that allows for public servants to be assigned to the Independent Commission against Corruption, although the provision was originally intended primarily to assist with the initial establishment of the Commission. The Economic and Financial Crimes Commission in Nigeria relies heavily on secondees, but recruits them only after undertaking considerable background checks (including polygraph tests, as necessary) and performance tests to ensure that they are properly qualified. Notably, Commission staff salaries are higher than those for general public service; for secondees, this means that they receive a base salary from their home agency and a “top-up” from the Commission. Likewise, the Indonesian Corruption Eradication Commission often seconds staff, but they are first put through psychological and competency-based testing and background checks by a third-party recruiter. Seconded staff are paid in accordance with the higher salary scales of the Commission. A secondment term lasts four years but can be extended to a maximum of 10 years, after which the staff member must either permanently join the Corruption Eradication Commission or return to his or her home agency. The Independent Commission against Corruption in Hong Kong, China, takes a similar approach, but secondees must make that choice after five years.

93. ACAs should have the power to discipline and, where necessary, dismiss staff for underperformance or violations of the standards of conduct. The power of sanctions is crucial, in particular in the context of ACA-specific codes of conduct and special duties imposed by law on ACA staff in relation to the handling of complaints, investigations and prosecutions. Discipline and dismissal processes can become more complicated where secondees are engaged by ACAs. Several ACAs use secondees from police forces, but police disciplinary bodies often continue to handle their discipline matters. In-house grievance and appeals processes may apply only to staff, while seconded officers may continue to be disciplined (and promoted) by outside police bodies. Given the complexity of such arrangements, ACAs should consider the relevant oversight mechanisms, including coordination issues, when engaging secondees.

Clear and transparent internal procedures

94. Article 7 (1) of the Convention calls on public bodies to adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials that are based on principles of efficiency, transparency and objective criteria such as merit,

equity and aptitude. It is essential that ACAs serve as role models in the implementation of the Convention by operationalizing such values internally. Many ACAs already have strong systems in place to ensure accountable recruitment, discipline and dismissal procedures, which are captured in internal human resources manuals and handbooks. In some countries, the law even requires merit-based recruitment and accountable staff management.

Merit-based recruitment of staff in Fiji and Mauritius

The Constitution of Fiji empowers the leadership of the Independent Commission against Corruption to determine all employment matters relating to staff and explicitly states that this includes “the qualification requirements for appointment and the process to be followed for appointment, which must be an open, transparent and competitive selection process based on merit”.^a Likewise, the law establishing the Independent Commission against Corruption in Mauritius sets out detailed guidance on merit-based recruitment, requiring that the Commission not select a person for employment unless: it has advertised its intention to do so in the *Government Gazette* and in at least three daily newspapers having a wide circulation in Mauritius; it has considered all applications received; it has interviewed the best-qualified candidates; and it is satisfied that, on the basis of qualifications, experience and merit, the candidate who has been selected is of a standard that qualifies him or her to be appointed as an officer in the grade for which he or she has been selected.^b

^aConstitution of Fiji, 2013, sect. 115[11][b].

^bMauritius, Prevention of Corruption Act, No. 5, sect. 24 [2].

95. Good practice also requires that the ACA clearly dictate procedures for discipline and dismissal in a code of conduct or internal human resources manual and that staff understand such procedures. As mentioned in paragraph 79, any disciplinary process should require the ACA to afford the staff member notice and a right to be heard in relation to any allegation or complaint. An appeals process should be available to staff in relation to disciplinary or dismissal proceedings.

Disciplinary procedure and right to appeal for staff in Bhutan

In Bhutan, the internal ethical code of conduct of the Anti-Corruption Commission differentiates between minor, major and repeated breaches, allowing for penalties varying from demotion to termination. The code also includes an appeal process whereby any employee who is aggrieved by a decision of the Ethics Committee may appeal to the Chair of the Anti-Corruption Commission within 10 days from the day of the receipt of the disciplinary order by the employee concerned.^a

^aBhutan, Anti-Corruption Commission, “Ethical Code of Conduct”, p. 9.

IV. Financial resources

96. One of the most common ways to control an ACA is through its financial resources. Reliable and sufficient financial resources are essential to attract talented staff and fund ACA operations. ACAs must also have sufficient independence from the executive branch of government in the day-to-day management of their resources. This chapter focuses on the following principles: remuneration (principle 9), adequate and reliable resources (principle 11) and financial autonomy (principle 12).

REMUNERATION (PRINCIPLE 9)

ACA employees shall be remunerated at a level that would allow for the employment of a sufficient number of qualified staff.

Commentary

97. Experience has shown that without sufficient, qualified staff, ACAs have struggled to discharge their often complex and wide-ranging mandates. Appropriate remuneration is crucial to attract properly qualified and motivated ACA staff.

Sufficient number

98. In practical terms, an ACA requires sufficient staff to comply with its mandate effectively and efficiently. In practice, however, determining what is sufficient is a complex matter; it largely depends on the mandate of the ACA (whether it specializes in a certain area or is expected to perform a range of different functions) and the complexity of its operating context (whether it engages with a large public sector, a large population and/or a geographically large area). Experience from around the world shows that ACAs have a great variety of staffing structures, with staff numbers varying accordingly. A 2017 study of 10 ACAs in the Asia and the Pacific region showed that staffing numbers varied from one ACA staff member per 5,333 people (Hong Kong, China) to one per 461,442 people (Pakistan).²⁹ In raw terms, staff numbers can vary from fewer than 100 to more than 5,000 in highly populated

²⁹Jon S. T. Quah, “Anti-corruption agencies in Asia Pacific countries: an evaluation of their performance and challenges” (Berlin, Transparency International, 2017), p. 12.

and/or geographically sprawling countries. Staff numbers are also higher in countries where ACAs have created regional offices in an effort to place their work in closer proximity to affected populations.

99. Although there is no agreed formula for determining what number of staff is “sufficient”, an assessment should ideally be made in advance of the design of any internal human resources structure to assess what functions the ACA will need to perform, what skills will be needed in order to ensure effective implementation of those functions, where those skills will need to be placed and from where they can be drawn (e.g., whether they can be seconded from other public service organizations). ACAs may need to allow time to arrive at an appropriate staffing table. Nonetheless, it is important that the ACA itself have a properly designed organizational structure and a vision for its staffing plan. It can be useful to create an organizational chart of the ACA to set out the various units responsible for the delivery of specific functions and detail the ideal number of staff assigned to each unit.

Qualified staff

100. Raw numbers of staff alone are not sufficient to ensure that an ACA can effectively discharge its duties. Experience shows that the specialized nature of the work of ACAs, in particular in relation to investigations and prosecutions (where they are part of the agency’s mandate), means that ACAs often need to recruit staff who have rare or sought-after skills and qualifications, for example in relation to forensic accounting or complex prosecutions. In order to recruit and retain such people, ACAs need to have the flexibility to engage in different types of contractual arrangements, including temporary assignments, as opposed to stringent public service recruitment processes that are usually prolonged and do not necessarily attract the relevant skills. They also need to have the flexibility to offer more attractive salary packages than permitted under ordinary public service scales. As noted in paragraph 91, there has been considerable discussion among ACAs about the merits of bringing in staff on short- or long-term contracts, rather than as permanent staff, with some valuing the resulting flexibility and others suggesting that it makes staff too insecure and less likely to commit fully to the ACA. The types of contracts that will attract qualified staff in a given country are context-specific. Whatever options are pursued, they should allow for the recruitment of all appropriately skilled profiles. Depending on their mandates, ACAs will require diverse staff members who execute their duties with a high level of professionalism and to the satisfaction of various clients and stakeholders.

Remuneration levels

101. Article 7 (1) (c) of the United Nations Convention against Corruption calls for the strengthening of human resources systems in order to ensure that they promote adequate remuneration and equitable pay scales, taking into account the level of economic development of the State party. Ideally, an ACA should be given the power to determine the salary and service conditions for its staff to ensure that ACA vacancies are as competitive as possible in the local job market in order to attract

the necessary qualified staff. ACA control over the remuneration of staff also guards against the possibility of executive interference, limiting the ability of the executive branch to arbitrarily reduce staff salaries or allowances.

Remuneration of agency staff in Ukraine

In Ukraine, the law specifically states that the salaries of staff members and employees of the National Agency on Corruption Prevention shall be high enough to ensure sufficient financial conditions for the proper performance of their duties considering the nature, intensity and danger of the work, to ensure the recruitment and consolidation of qualified personnel in the Agency's staff, to encourage the achievement of high-standard results in official activities and to compensate for the costs of the intellectual efforts of workers.^a Detailed guidance on salary levels is provided; for example, the salaries of staff members and officials of the Agency consist of a base salary, long-service bonuses, bonuses for rank, bonuses and other allowances established by the legislation on civil service, with the base salary of a member of the National Agency constituting 19.5 times the minimum wage. The base salary of the Chair of the Agency is established by multiplying the base salary of an Agency staff member by a factor of 1.3.^b

^aFluri and Badrack, eds., *Anti-Corruption Measures in Ukraine after the Revolution of Dignity*, appendix I, art. 16 (1).

^b*Ibid.*, appendix 1, art. 16 (2).

102. In some countries, the ACA leadership is afforded the general power to determine remuneration, with salary levels set in consultation with an oversight body.

Setting of salary levels in New South Wales, Australia, Fiji and Sierra Leone

In Fiji, the Constitution established the Independent Commission against Corruption and endowed its Commissioner and Deputy Commissioner with "the authority to determine all matters pertaining to the employment of all staff in the Fiji Independent Commission Against Corruption, including (a) the terms and conditions of employment; (b) the qualification requirements for appointment and the process to be followed for appointment, which must be an open, transparent and competitive selection process based on merit; (c) the salaries, benefits and allowances payable, in accordance with its budget as approved by Parliament; and (d) the total establishment or the total number of staff that are required to be appointed, in accordance with the budget as approved by Parliament".^a In Sierra Leone, the law provides that the "Directors and other staff of the Commission shall be employed on such terms and conditions as the Commission shall, after consultation with the Minister responsible for finance, determine".^b In New South Wales, Australia, the Commissioner of the Independent Commission against Corruption may fix the

Setting of salary levels in New South Wales, Australia, Fiji and Sierra Leone (*continued*)

salaries, wages, allowances and conditions of employment of the staff employed under the relevant section of the Independent Commission against Corruption Act insofar as they are not fixed by or under another Act or law.^c

^aConstitution of Fiji of 2013, sect. 115 (11).

^bSierra Leone, Anti-Corruption Act 2008, sect. 12 (4).

^cAustralia, New South Wales, Independent Commission against Corruption Act, sect. 104 (6).

103. A number of ACAs have used their power to design flexible, competitive salary packages.

Higher salaries for agency staff in Bhutan, Indonesia and Mauritius

In Mauritius, the law on the Independent Commission against Corruption explicitly states that “the Commission shall employ such officers it considers necessary to discharge its functions on such terms and conditions as it thinks fit” and that the “Commission shall, with the approval of the Parliamentary Committee, establish the salaries, wages, allowances and conditions of employment of officers”.^a In order to set proper remuneration levels, the Commission hired a consultant to undertake an independent comparative study of wage levels for similar staff and provide recommendations to its leadership. On that basis, the Commission decided to offer a higher salary than that given to ordinary public servants, with a two- to three-month gratuity paid for each year of service. At the same time, the country implemented a new performance management system to better assess staff outputs, including requiring more senior management oversight to ensure that performance bonuses were justified. In Indonesia, the salaries at junior and middle levels in the Corruption Eradication Commission are approximately 30 per cent higher than civil servant salaries, but at senior levels, some Commission staff left for more competitive salaries in the private sector. The Commission determines final salaries using a robust annual performance review system, which permits excellent performance to be rewarded with a maximum bonus of 2.5 times the monthly salary. In Bhutan, the Anti-Corruption Commission also tops basic civil service salaries with a 45 per cent professional allowance for investigators and a 20 per cent professional allowance for other staff to ensure competitiveness with the national job market.

^aMauritius, Prevention of Corruption Act, No. 5, sect. 24 (1) and (3).

ADEQUATE AND RELIABLE RESOURCES (PRINCIPLE 11)

ACAs shall have sufficient financial resources to carry out their tasks, taking into account the country's budgetary resources, population size and land area. ACAs shall be entitled to timely, planned, reliable and adequate resources for the gradual capacity development and improvement of the ACA's operations and fulfilment of the ACA's mandate.

Commentary

104. At the 2014 session of the Open-ended Intergovernmental Working Group on the Prevention of Corruption, it was observed that “States underlined the key link between adequate funding and the ability of corruption prevention bodies to act independently. While some States reported that significant resources had been allocated, a majority of States noted the financial pressures that those bodies currently faced”.³⁰ ACAs themselves have reported that their work is often constrained by limited resources.

Sufficient financial resources

105. Article 6 of the Convention requires that ACAs be provided the material resources needed to carry out their functions, while article 36 similarly requires that relevant ACAs should have the appropriate resources to carry out their tasks. Research into ACA budgets in relation to national population sizes suggests that spending at least \$1 per capita on an ACA may be sufficient to contribute substantially to addressing corruption.³¹ Indeed, the research revealed a clear correlation between expenditure per capita on an ACA and a country's performance in global indices such as the World Bank Control of Corruption index. While sufficient financial resources are by no means a guarantee that an ACA will perform effectively, experience shows that insufficient funding is a clear inhibitor of progress. The sufficiency of budget resources depends on a range of factors, including the size and population of the country, the breadth of the agency's mandate(s), the level of decentralization of the agency's operations and the complexity of corruption issues.

Sufficient financial resources prescribed in Fiji and Ukraine

In Fiji, in order to entrench sufficient funding for the Independent Commission against Corruption, the Constitution specifically requires that Parliament ensure that adequate funding and resources are made available to the Commission, to enable it to independently and effectively exercise its powers and perform its functions and duties.^a In Ukraine, the law covering the National Agency on Corruption Prevention specifically states that its budget shall include funds for awareness campaigns and training on issues of preventing and

³⁰CAC/COSP/WG.4/2014/2, para. 64.

³¹De Jaegere, “Principles for anti-corruption agencies”, pp. 99–100.

Sufficient financial resources prescribed in Fiji and Ukraine (*continued*)

countering corruption and that it shall be supplied with all the necessary material resources, equipment and other assets to carry out its official duties.^b

^aConstitution of Fiji, 2013, sect. 45 (11).

^bFluri and Badrack, eds., *Anti-Corruption Measures in Ukraine after the Revolution of Dignity*, appendix I, art. 17(3)–(4).

106. While there is no agreed formula for what constitutes “sufficient financial resources”, meeting this benchmark at the operational level requires funding to cover administrative costs (e.g., for sufficient personnel, capacity development and training, equipment and travel), as well as operational costs (e.g., for activities in relation to prevention, education, investigation, prosecution and coordination). ACAs should report on administrative and operational expenditures separately to enable performance evaluation at the end of the financial year.³² Such reporting can be used to demonstrate the impact of the ACA and its ability to efficiently spend public moneys. In some cases, it may also reveal a chronic lack of resources for operational activities. Disaggregating resources by function can be useful to ensure that sufficient resources are directed towards each ACA mandate and that funds are available if new functions are added.

Timely, planned, reliable and adequate resources

107. The resources of the ACA should also derive from a regular budget rather than ad hoc contributions provided under an executive decree or donor funding. Ideally, the ACA should have a separate budget line in the national budget that is passed through the legislature for review and endorsement. The proposed ACA budget should be developed by the ACA in consultation with any external supervisory or advisory body,³³ but submitted to the legislature in its original form, without cuts by the ministry of finance or any other external entity. This ensures that ministries and departments cannot reduce the budget of the ACA prior to legislative approval.

Agency budgets in New South Wales, Australia, Hong Kong, China, Indonesia, Jordan, Kuwait, Mauritius and Ukraine

The New South Wales Independent Commission against Corruption has its own budget line in the state’s budget.^a The Commission develops its own budget in consultation with the joint parliamentary committee that oversees its work, which in practice renders the proposed budget more defensible when it reaches the Cabinet and the legislature for final approval. The ACAs in Hong Kong, China, and Mauritius follow similar processes and have also highlighted that collaboration with their oversight boards in budget planning lends credibility to their proposed budgets. In Ukraine, the law on the National Agency on Corruption Prevention states that its budget will be a separate line item in the national budget.^b In Indonesia, the law on the Corruption Eradication

³²See also the section on public reporting (principle 15).

³³See also the section on external accountability (principle 14).

Commission specifically requires that the State provide funding for the operations of the Commission.^c The law covering the Jordan ACA clarifies that the ACA shall have a judicial personality and have financial and administrative independence.^d Moreover, the law states that the ACA in Jordan shall have a separate budget.^e In Kuwait, the law affords the ACA the power to draft its own budget and goes further by stating that, once the budget goes to the Ministry of Finance, “in case of disagreement, or if the Ministry of Finance objected to the Authority’s estimations and the Authority did not agree to such objections, the Minister of Finance shall present such objections to the Council of Ministers for its action”.^f

^aMeagher, “Anti-corruption agencies”, p. 94.

^bFluri and Badrack, eds., *Anti-Corruption Measures in Ukraine after the Revolution of Dignity*, appendix I, art. 17 (2).

^cIndonesia, Law No. 30 of 2002, art. 64.

^dJordan, Integrity and Anti-Corruption Law No. 13 of 2016, art. 3 (a).

^e*Ibid.*, art. 31 (a).

^fKuwait, Law No. 2 of 2016 on Establishing the Kuwait Anti-Corruption Authority and the Provisions on Disclosure of Assets and Liabilities, art. 18.

108. Ideally, the law should provide some form of minimum budget guarantee to protect the ACA against any arbitrary reductions, an option that could otherwise be used to punish an effective ACA. Such a minimum budget guarantee could be expressed as a percentage of the annual budget. In effect, that would guarantee stable funding for the ACA, while allowing Governments the flexibility to decrease the agency’s budget in times of financial crisis, when they may need to reduce all expenditures.

Minimum budget guarantees for agencies in Burkina Faso, Canada, Mongolia and the United States

In Mongolia, the “budget of the Anti-Corruption Agency shall be reflected separately in the government budget, and the budget shall be sufficient to enable the Agency to operate independently”, and “the budget of the Anti-Corruption Agency for a given year may not be less than the body’s budget in the previous year”.^a In Burkina Faso, the law stipulates that the budget of the ACA must not be below 0.1 per cent of the national budget.^b The cities of Chicago in the United States and Montreal in Canada both use minimum budget guarantees to secure funding for the offices of their Inspectors General.^c Transparency International has gone further and proposed that good-practice budgeting would require that the average ACA budget as a proportion of the total State budget be above 0.2 per cent,^d subject, of course, to the development of an appropriate budget proposal to that end.

^aMongolia, Law on Anti-Corruption (2006) arts. 29.2–29.3.

^bBurkina Faso, Organic Law No. 082-2015/CNT, art. 59.

^cCenter for the Advancement of Public Integrity, “Funding integrity: comparing Inspector General funding approaches” (March 2018), p. 2.

^dJohn S. T. Quah, *Anti-Corruption Agencies Strengthening Initiative: Research Implementation Guide* (n.p., Transparency International, 2015), p. 34.

109. Governments should disburse funding for ACAs in a timely manner, such as at the start of the year or at regular intervals. ACAs often experience difficulties when the executive provides resources only at the end of the year.

110. In some countries, ACAs have developed novel arrangements to supplement their budgets through their own activities.

Arrangements to supplement agencies' budgets through their own activities in France, Jamaica and the United Kingdom

In the United Kingdom, the Serious Fraud Office received a proportion of the sums recovered from confiscation orders and civil recovery proceedings under the Asset Recovery Incentivisation Scheme until 2014. Because that income stream was extremely difficult to manage owing to the unpredictable nature of when and if the State would receive funds, the Office agreed with the Treasury that all recovered funds would go to the central treasury, with a fixed sum added to the Office's core funding.^a More recently, the Office developed an approach to what is called "blockbuster funding", where it would be given additional funding to cover expenditures on any case exceeding £2.5 million during the financial year.^b The French Anti-Corruption Agency can impose sanctions on companies found to have been in breach of the law and can require the implementation of a compliance programme. In such cases, the Agency can recover the investigation costs from the company sanctioned within three years. In Jamaica, the Integrity Commission and the Treasury agreed on an approach that enables the Commission to use fines recovered from successful cases to pay its legal costs for pursuing the cases. The fine must first be paid to the General Fund, after which the Commission submits a supplementary funds request from the budget to have the money returned.

^aUnited Kingdom, Serious Fraud Office, "About us". Available at www.sfo.gov.uk/.

^bIbid. This arrangement applies from April 2018 and replaces the previous arrangement whereby "blockbuster funding" covered the entire cost of a case where expenditure on that case was expected to exceed 5 per cent of the Serious Fraud Office's core budget, which was lower at the time.

111. In other countries, ACAs have raised additional funds for their activities through asset forfeiture or recovery.

Additional resources from asset forfeiture or recovery in the Niger and the United States

The federal Government of the United States, as well as many of its constituent states, administers an asset forfeiture scheme called "equitable sharing" that enables justice sector agencies, including ACAs, to apply for a share of assets legally seized in criminal cases.^a The assets and funds are generally liquidated and used to compensate the victims of corruption crimes or returned to the state treasury. However, ACAs that take part in a case can apply to use a

proportional share of remaining funds for certain approved activities, such as new equipment, training programmes and preventive activities. The United States Justice Department has put in place guidelines and safeguards to prevent abuse.^b The funds are held in a trust, can only be used for certified purposes, are subject to audit and cannot be used for purposes that may give the appearance that authorities are profiting from crime, such as hiring new staff, giving out salary raises or bonuses or holding social activities. In the Niger, the law provides for a special account at the Treasury into which 5 per cent of the amounts recovered are deposited after final convictions in judicial procedures initiated by the ACA. Those amounts are to be used to fund witness protection and investigations, to compensate victims and to motivate agents.^c

^a Pamela M. Stanek, "Asset forfeiture in public corruption cases: practitioner guide", Practitioner Toolkit Series (New York, Center for the Advancement of Public Integrity, Columbia Law School, 2016).

^b United States, Department of Justice and Department of Treasury, "Guide to equitable sharing for state, local, and tribal law enforcement agencies (July 2018); and Stanek, "Asset forfeiture in public corruption cases".

^c Niger, Law No. 2016-44 of 6 December 2016, art. 29.

112. Some ACAs are empowered by law to proactively raise resources themselves in addition to funds received from the national budget. Such external funds could be used to build a long-term trust fund to support the work of the ACA and protect it against fluctuations in national budget allocations. It is important to ensure that proper approval and oversight mechanisms are in place to avoid raising concerns about conflicts of interest that could undermine the effectiveness of an ACA. ACAs should also obtain a pledge from the Government that their budgets will not be reduced owing to alternative funds raised.

External financial support in Jordan, Mauritius, Nigeria and Sierra Leone

In Mauritius, the law allows the ACA to accept donations, grants and sponsorship after approval by the parliamentary committee responsible for ACA oversight, and all such funds received are to be credited to the General Fund.^a In Nigeria, the law allows the Economic and Financial Crimes Commission to accept gifts of land, money or other property (whether within or outside Nigeria) upon such terms and conditions, if any, as may be specified by the person or organization making the gift, provided that the terms and conditions are not contrary to the objectives and functions of the Commission.^b In Jordan, the law states that the budget of the Integrity and Anti-Corruption Commission consists of funds allocated from the national budget and aid, donations and grants, and any other sources accepted by the Board, subject to the approval of the Council of Ministers if the source of the funds is non-Jordanian.^c In Sierra Leone, the law allows the Anti-Corruption Commission to accept grants, gifts and donations but specifically requires that no gift, grant, donation or bequest be accepted by the Commission if it is made on condition that the Commission perform

External financial support in Jordan, Mauritius, Nigeria and Sierra Leone (continued)

any function or discharge any duty or obligation other than a function, duty or obligation aimed at achieving its objects, or on any condition determined solely by the donor.^d

^a Mauritius, Prevention of Corruption Act, No. 5, sect. 32 (2).

^b Nigeria, Economic and Financial Crimes Commission (Establishment) Act 2002, sect. 34 (3).

^c Jordan, Integrity and Anti-Corruption Law No. 13 of 2016, art. 31 (b), 2.

^d Sierra Leone, Anti-Corruption Act 2008, sect. 17 (2).

Gradual capacity development and improvement

113. Both articles 6 and 36 of the Convention specifically require that ACAs have the resources to provide training to ensure that staff have sufficient capacity to carry out their functions. This requirement recognizes the importance of ensuring capacity development for staff, in particular in countries where the specialist skills required by ACAs may be in short supply and may need to be developed by the ACA over time, and/or in cases where a new ACA requires a large injection of human and financial resources to commence operations. Research shows that many ACAs initially struggled to identify staff with suitable skill sets and responded by recruiting from wider applicant pools outside typical law and justice backgrounds. Many ACAs had to invest heavily in training their initial staff: “Relying on both foreign technical assistance and in-house experience, the ACAs developed training regimens for new hires, including induction and regular follow-up sessions covering both procedural and substantive topics. Some agencies encouraged their personnel to specialize, often through training abroad. Other ACAs set up specialized teams that focused on special functions or subjects.”³⁴

Specialized teams in Indonesia and Latvia

The Indonesian Corruption Eradication Commission created a specialized surveillance and computer forensics team, while the ACA in Latvia assembled a team of campaign finance specialists.^a

^a Kuris, “From underdogs to watchdogs”, p. 6.

Some ACAs hired veteran staffers to launch initial investigations and mentor new recruits. Agencies also recruited recent university or police academy graduates with diverse skill sets, including in information technology, criminology, forensic accounting and social science.³⁵

³⁴ Kuris, “From underdogs to watchdogs”, p. 6.

³⁵ Ibid.

Building investigative capacity in Botswana and Croatia

In order to provide an insider's perspective, the ACAs in Botswana and Croatia sought recruits with relevant experience in fields prone to corruption, such as construction and finance. Croatia hired an early whistle-blower, who later went on to become a leading prosecutor. Botswana made up for its shortfall of senior investigators by recruiting staff from abroad.^a

^aKuris, "From underdogs to watchdogs". p. 6.

114. Funds must be available for such in-house professional development and operational improvement to enable ACAs to stay ahead of constantly changing developments that affect their activities, such as changes in the global finance sector. Some ACAs have also highlighted the benefit of funding for study exchanges, whether to bring experts into the country to train local staff or to send staff overseas for intensive hands-on training.

115. Some of the larger ACAs have also established their own internal training academies, which are resource-intensive. Such academies provide training for new recruits in their own agencies and for ACA staff from abroad. Agencies that lack the capacity to establish their own academies should try to incorporate a training budget for staff to attend courses abroad.

Anti-corruption training academies in Iraq, Malaysia and Nigeria

The Malaysian Anti-Corruption Commission set up the Malaysian Anti-Corruption Academy, the Nigerian Economic and Financial Crimes Commission set up its own academy and the Iraqi Commission of Integrity established the Iraqi Anti-Corruption Academy.

FINANCIAL AUTONOMY (PRINCIPLE 12)

ACAs shall receive a budgetary allocation over which ACAs have full management and control without prejudice to the appropriate accounting standards and auditing requirements.

Commentary

116. Even if ACAs obtain adequate and reliable budgets, they still risk facing difficulties in their daily operations if they need to rely on government approval for their expenditures. Hence, ACAs require control over their own financial resources. This is also necessary in order to implement the flexible human resources arrangements discussed above in relation to remuneration (principle 9).

Full management and control of budgetary resources

117. It is essential that ACAs be empowered to manage and control the budget provided to ensure that funds are appropriately used for priority activities in a timely and targeted manner. While ACAs often have oversight bodies³⁶ that provide general guidance on their activities and operations, it is important that they have the operational flexibility and space to make decisions concerning daily spending and administrative issues.

118. Good practice requires that the ACA leadership be responsible for ensuring proper financial management, but in practice such responsibilities may also be delegated to a chief financial officer, with regular oversight provided by the ACA senior management team.

Financial management in Burkina Faso and Ukraine

In Burkina Faso, the law explicitly provides that the Head of the High Authority for State Control and Anti-Corruption is the authorizing officer for the expenses under the institution's budget and requires the head of the Authority to adopt a decree setting out the modalities for using the funds allocated to it.^a Likewise, in Ukraine, the National Agency on Corruption Prevention is the senior manager of the funds from the State budget of Ukraine allocated for its financing.^b

^aBurkina Faso, Organic Law No. 082-2015/CNT, arts. 16 and 62.

^bFluri and Badrack, eds., *Anti-Corruption Measures in Ukraine after the Revolution of Dignity*, appendix I, art. 17 (3).

Compliance with accounting standards and auditing requirements

119. While the independence of ACAs is strengthened by their full management of and control over their budgets, it is essential that ACAs comply with overarching governmental accountability rules and regulations. In particular in relation to expenditures, it is crucial for ACAs to comply with international and national accounting and auditing standards. Many ACA laws require that ACAs produce audited accounts at the end of each financial year, which are submitted to the legislature, the supreme audit institution and/or the responsible minister. This requires that internal accounting practices comply with minimum audit standards and that an annual financial report be produced.

³⁶ See the section on external accountability (principle 14).

Account-keeping and regular auditing of agency expenditures in Burkina Faso, Indonesia, Malaysia, Sierra Leone and the United Kingdom

In Burkina Faso, the head of the High Authority for State Control and Anti-Corruption is assisted by an accountant, a financial auditor, a procurement officer and a programme manager nominated by the Council of Ministers upon proposition by the Minister of Finance.^a Moreover, the accounts of the agency are expected to undergo a regular audit by a judicial audit institution. Similarly, in Sierra Leone, the law stipulates that the Commission shall keep proper books of account and proper records in relation to the funds of the Commission and the books of account and records shall be in such form as the Auditor General shall approve. The books of account of the Commission shall be audited by the Auditor-General or by an auditor appointed by him or her. The audit shall be completed within two months after the end of each financial year of the Commission, which shall be the same as the financial year of the Government.^b The Malaysian Anti-Corruption Commission and the Corruption Eradication Commission in Indonesia both have internal audit processes and use external auditors to produce annual audited reports, which are then published on their respective websites. The Corruption Eradication Commission is audited by the Supreme Audit Board. In the United Kingdom, the National Crime Agency, within which the Economic Crime Command, the International Corruption Unit and the Bribery and Corruption Intelligence Unit work closely with the Serious Fraud Office as part of the State's overall anti-corruption framework, has particularly strong audit requirements. The Board of the National Crime Agency is supported by the Audit and Risk Assurance Committee, which is responsible for reviewing the comprehensiveness and reliability of assurances on governance, risk management, the control environment and the integrity of financial statements and the annual report and for reporting to the Board on a quarterly basis.^c

^aBurkina Faso, Organic Law No. 082-2015/CNT, art. 61.

^bSierra Leone, Anti-Corruption Act 2008, sect. 18 (2)–(4).

^cUnited Kingdom National Crime Agency, "Audit and risk assurance committee: terms of reference", available at www.nationalcrimeagency.gov.uk/; and HM Treasury, "Audit and risk assurance committee handbook" (March 2016), chap. 2, principle 3.



V. Oversight

120. When ACAs observe the Jakarta Principles, they can operate independently without government interference. This allows them to make ethical decisions for themselves in pursuit of their mandates to prevent and combat corruption effectively. However, like other institutions, ACAs are also at risk of corruption from within. Hence, it is very important to balance their powers with effective oversight by external authorities and by the public at large. Moreover, the public can be the agencies' greatest ally, and it is thus important to cultivate good relations with the public and gain popular trust. This chapter focuses on principles 14 to 16: external accountability, public reporting, and public communication and engagement.

EXTERNAL ACCOUNTABILITY (PRINCIPLE 14)

ACAs shall strictly adhere to the rule of law and be accountable to mechanisms established to prevent any abuse of power.

Commentary

121. While articles 6 and 36 of the United Nations Convention against Corruption emphasize the necessary independence of ACAs, they also stress that such independence should be granted in accordance with the fundamental principles of the legal system of the State party. Independence is not the same as arbitrariness. As the well-known saying goes, power tends to corrupt, and absolute power corrupts absolutely. ACAs need to be powerful, but external accountability through the rule of law must restrain them to ensure their proper functioning.

Strict adherence to the rule of law

122. Where ACAs are given a mandate to investigate and/or prosecute alleged corruption, they are often granted broad-ranging powers in terms of their ability to search premises, seize documents, undertake surveillance (including through wiretaps) and apply other investigative techniques. Such powers are often granted in response to lessons learned in previously unsuccessful efforts by the police to investigate corruption, and in some cases ACAs are allowed to use more extensive police powers. It is critical that ACA leadership and staff strictly adhere to international human rights standards and the rule of law when exercising those powers.

123. Most laws on ACAs provide detailed guidance on the exercise of their investigative and/or coercive powers, and many require judicial oversight concerning the use of their most intrusive powers.

Judicial oversight over the use of investigative powers in Burkina Faso, Indonesia, Mauritius, Nigeria and the United Kingdom

In Burkina Faso, the law grants judicial police powers to the investigators of the High Authority for State Control and Anti-Corruption but requires that the investigators exercise those powers in accordance with the criminal procedure code,^a which requires judicial oversight for the use of intrusive powers, such as wiretaps, property searches and arrests of suspects. By contrast, a number of ACAs have been given strong investigative powers that can be used without prior judicial oversight. For example, the Indonesian Corruption Eradication Commission is authorized to exercise investigative powers, including surveillance, search and seizure, without approval from the judiciary. To counter the misuse of such powers, the Commissioners need to seek approval from the Commission's Supervisory Board before exercising such powers. Moreover, robust internal procedures are in place for using such powers, and, in the event that such powers are not exercised in a correct manner, anyone is able to challenge their use in court. In the United Kingdom, once the Director of the Serious Fraud Office accepts a case for criminal investigation, the Office can use its investigatory powers under section 2 of the Criminal Justice Act 1987 (called "section 2 powers") to compel individuals to attend interviews, submit to a search of their premises or provide the Office with information believed to be relevant to a matter under investigation, subject to up to six months' imprisonment for non-compliance.^b Those powers cannot otherwise be used in respect of fraud, although they can be used in pre-investigation stages in corruption cases. In Mauritius, search and seizure powers can be exercised and bank accounts can be frozen immediately by the Independent Commission against Corruption unilaterally, but wiretapping requires judicial approval. In Nigeria, the Economic and Financial Crimes Commission has the power to unilaterally freeze bank accounts temporarily, though such actions must be confirmed by a court within 72 hours.

^aBurkina Faso, Organic Law No. 082-2015/CNT, art. 55.

^bUnited Kingdom, Serious Fraud Office, "About us". Available at www.sfo.gov.uk/.

Accountability to external mechanisms

124. In addition to judicial oversight, ACAs should also be accountable to other oversight mechanisms for their overall performance and case management. Regardless of the structure of the agency's top leadership (individual or collegial), such oversight should be clearly established both by the law establishing ACAs and by other rules of procedure (e.g., parliamentary) to ensure that necessary support and control are exercised and undue interference is avoided. Such oversight mechanisms particularly strengthen the accountability of top ACA managers.

Oversight by review committees in Hong Kong, China, and Malaysia

Both Malaysia and Hong Kong, China, have operations review committees tasked with reviewing the operational decision-making of the Malaysian Anti-Corruption Commission and the Independent Commission against Corruption, respectively, to determine whether the management of and decisions regarding corruption complaints, investigations and prosecutions were proper.

125. In some jurisdictions, ACAs are responsible to a committee of the legislative body.

Oversight by legislative bodies in Australia, Indonesia and Mauritius

In Mauritius, the law requires that a parliamentary committee composed of nine members (five designated by the Prime Minister, four by the leader of the opposition) be established to monitor the Independent Commission Against Corruption.^a The parliamentary committee is required to meet monthly and has powers to review the budget of the Commission, monitor its activities, receive and respond to Commission reports and report to the legislature and the Prime Minister on issues requiring their attention, including budget matters.^b The Indonesian Corruption Eradication Commission is monitored by Parliamentary Commission 3, which is also responsible for overseeing the Ministry of Law and Human Rights, the Attorney General's Office, the Supreme Court and the Indonesian National Police. Parliamentary Commission 3 can call in Commissioners of the Corruption Eradication Commission for public hearings and can visit the premises of the Commission to examine its work. In Australia, the activities and operations of all six subnational ACAs^c are overseen by parliamentary committees specifically mandated under the relevant ACA laws.^d

^a Mauritius, Prevention of Corruption Act, No. 5, sect. 59 [1]–[2].

^b *Ibid.*, sects. 60–61.

^c The New South Wales Independent Commission against Corruption, the Queensland Crime and Corruption Commission and the Western Australia Corruption and Crime Commission have been operating in some form since the late 1980s. The Tasmanian Integrity Commission, Victorian Independent Broad-based Anti-corruption Commission and the South Australia Independent Commissioner against Corruption were established in or after 2010.

^d Australia, Parliament House, "State, territory and international integrity commissions" in *Select Committee on a National Integrity Commission: Report* (Canberra, 2017).

126. Many ACAs have developed robust external accountability mechanisms to address complaints of misconduct.

Oversight bodies handling complaints against agencies or their staff in Australia, Hong Kong, China, and Malaysia

Malaysia and Hong Kong, China, both have complaints committees responsible for monitoring and reviewing the handling by each ACA of non-criminal complaints against the agency or its officers.^a In Hong Kong, China, the

Oversight bodies handling complaints against agencies or their staff in Australia, Hong Kong, China, and Malaysia (*continued*)

Complaints Committee, which comprises members of the executive and legislative branches, as well as eminent members of the community, was set up in 1977. It submits an annual report that is tabled in the Legislative Council and made available to the general public as a measure to enhance the transparency and accountability of the Committee.^b The New South Wales Independent Commission against Corruption and the Western Australian Corruption and Crime Commission are both overseen by parliamentary inspectors, each of whom has the power to audit the operations of the respective Commission for the purpose of monitoring compliance with the law of the state, to issue reports and recommendations addressing complaints of abuse of power, impropriety and other forms of misconduct and to assess the effectiveness and appropriateness of the Commission's procedures relating to the legality or propriety of its activities.^c The Parliamentary Inspector in New South Wales can also address conduct amounting to maladministration, including delays in the conduct of investigations and unreasonable invasions of privacy.^d

^aHong Kong, China, "ICAC Complaints Committee: annual report 2017" (Hong Kong Independent Commission against Corruption, 2017), p. 3; and Malaysian Anti-Corruption Commission Act 2009, sect. 15.

^b"ICAC Complaints Committee", p. 3.

^cIndependent Commission against Corruption Act 1998, No. 35, sect. 57B; and Corruption, Crime and Misconduct Act 2003, sect. 195.

^dIndependent Commission against Corruption Act 1998, No. 35, sect. 57B (1) (c).

127. Additional oversight mechanisms and processes that use civil society as an accountability check have also been developed in some jurisdictions.

Civil society oversight in Australia, Hong Kong, China, Indonesia, Nigeria and Sierra Leone

In Hong Kong, China, the Independent Commission against Corruption has created citizens' oversight boards, known as Advisory Committees, which are appointed by the executive branch but chaired by private citizens. Four committees undertake oversight: the Advisory Committee on Corruption, which oversees the general policy and direction of the Commission, and one committee dedicated to overseeing each of the Commission's departments – the Operations Review Committee, the Corruption Prevention Advisory Committee and the Citizens Advisory Committee on Community Relations.^a In New South Wales, Australia, the Independent Commission against Corruption drew on the experience in Hong Kong, China, and integrated citizens' oversight through the Operations Review Committee, which reviews complex complaints to provide advice on how to proceed and whose membership includes private citizens.^b In New South Wales and Western Australia, the Independent Commission against Corruption and the Corruption and Crime Commission, respectively, have powers to hold public hearings in relation to their investigations, which provides a visible mechanism by which the public can observe and oversee the operations and impact of the ACAs. The Nigerian Economic and

Financial Crimes Commission also holds regular meetings with civil society organizations to encourage their feedback on the effectiveness of the Commission's operations and meets with judges to obtain their inputs on anti-corruption law enforcement efforts. The Sierra Leone Anti-Corruption Commission holds public quarterly meetings with civil society, which are covered by the media. The Indonesian Corruption Eradication Commission holds regular "anti-corruption summits" with civil society organizations, academics, experts and other stakeholders to discuss the latest anti-corruption issues and challenges. The Commission also encourages the establishment of anti-corruption research centres at universities in order to promote more discussion.

^a Meagher, "Anti-corruption agencies", p. 92.

^b *Ibid.*, pp. 92-93.

128. Subjecting ACAs to national freedom-of-information laws is another mechanism to enable citizens' oversight of ACAs by imposing a duty on them to disclose records on request and in some cases to publish records proactively.³⁷ However, in complying with these obligations, ACAs must ensure that such disclosures do not adversely affect their work and/or the individuals targeted by their investigations. The right to privacy and the confidentiality of investigations should be preserved.

Freedom-of-information legislation applied in Liberia

In Liberia, the Anti-Corruption Commission was compelled to release asset disclosure reports from ministers and their deputies under the Freedom of Information Act.^a

^a AllAfrica, "Liberia: Independent Commission compels LACC to make Asset Declaration available to Liberians", 25 July 2013.

PUBLIC REPORTING (PRINCIPLE 15)

ACAs shall formally report at least annually on their activities to the public.

Commentary

129. Article 10 of the Convention calls for public reporting by government bodies in furtherance of transparency and accountability. The law should require this of ACAs, but they can also be proactive in publishing reports on their activities and on the impact of their work in order to encourage public support for and understanding of their efforts.³⁸

³⁷ See also the sections on public reporting (principle 15) and public communication and engagement (principle 16).

³⁸ Guidance on this principle should be read in conjunction with principle 12, on financial autonomy, in relation to the need for publicly available audit reports of ACAs, and principle 16, on public communication and engagement.

Formal reporting

130. In most countries, it is common practice for independent statutory bodies to produce annual reports³⁹ on both their functions and expenditures. Where ACAs engage in law enforcement activities, such reports may include caseload statistics. Regular reporting by ACAs will enhance their accountability by providing clear accounts of their progress. It can also strengthen their institutional legitimacy if the reports are made public.⁴⁰ Formal reports serve as another accountability mechanism designed to ensure that the Government and the public can assess the performance of an ACA pursuant to its mandate and allocated budget.

131. Many ACAs report regularly to the legislature, which may review, scrutinize and respond to such reports as appropriate. This good practice aligns ACAs with other, similar independent oversight bodies, such as ombudsmen, supreme audit institutions and national human rights institutions, which also usually report to the legislature. It is good practice for legislatures to invite the heads of the ACAs to present their annual reports to legislative officials.

Presentation of annual reports to legislative officials in Bhutan, Mauritius, Nigeria, Sierra Leone and Tunisia

In Bhutan, the Chair of the Anti-Corruption Commission presents the Commission's annual report to Parliament every year. In Nigeria, the Economic and Financial Crimes Commission produces an annual report for the National Assembly that includes its audited financial statements. The relevant parliamentary committee then usually invites the Chair of the Commission to attend a hearing to discuss the details of the report. In Mauritius and Tunisia, the ACAs produce annual reports that cover both their activities and achievements, but also include recommendations and proposals for action on key corruption issues. The reports are submitted to the President and the head of Parliament; in Tunisia, the plenary of Parliament must discuss the report, while in Mauritius it is reviewed by the parliamentary committee responsible for oversight of the Independent Commission against Corruption. In Sierra Leone, the Anti-Corruption Commission produces an annual report, which by law must include a range of information on the Commission's investigations and prevention work.^a Reports are to be submitted to Parliament, where they are then sent to the parliamentary Rule of Law Committee, which has the power to call the Commission in to discuss the report, although the latter is not required to discuss specific cases. Officially submitted reports also become part of the official records of the legislature and, as such, are available to the public for review and retained as official documents.

^a Sierra Leone, Anti-Corruption Act 2008, sect. 19.

³⁹ Amy L. Kurland, "How to craft a powerful annual report: using an annual report to earn public trust, advance key goals, and tell your agency's story", Integrity in Brief Series, No. 2 (New York, Center for the Advancement of Public Integrity, May 2016).

⁴⁰ OECD, *Specialised Anti-Corruption Institutions*, p. 31; and De Jaegere, "Principles for anti-corruption agencies", p. 101.

132. In some countries, ACAs report to the executive branch, but this approach may provide a weaker accountability mechanism because such reports may not automatically become public. However, depending on the jurisdiction, the public may have access to them through freedom of information requests.

At least annual reporting

133. There is no best-practice timetable for reporting. ACAs most commonly produce annual reports, which ensures sufficient time so that reports do not become administrative burdens and aligns reporting with the financial year to ensure that they address both ACA performance and financial management.

Regular reporting in Uganda

The Inspectorate of Government in Uganda reports to Parliament every six months.^a

^a Meagher, "Anti-corruption agencies", p. 82.

Content of reporting on agency activities

134. A study of ACA reporting found that the contents of annual reports vary.

Content of agency reports in various countries

Some ACAs, including those in Argentina, Botswana and the United Republic of Tanzania, report the number of investigations started. Others, such as the agencies in New South Wales, Australia, and in Ecuador, Malaysia and Uganda, report on completed investigations in various ways. Some ACAs report actions taken by prosecutors and/or by administrative supervisors, and a few report both, including the agencies in Argentina, New South Wales, Australia, Hong Kong, China, Ecuador, Malaysia, the Philippines and the United Republic of Tanzania. Only a few ACAs, such as those in New South Wales, Australia, and in Hong Kong, China, and the Philippines, report results in the areas of prevention, technical assistance and analysis.^a A few agencies, such as the Independent Commission against Corruption in Hong Kong, China, and the United States Office of Government Ethics, publish benchmarks against which their performance can be measured, while the New South Wales Independent Commission against Corruption breaks down by sector the corruption allegations that it addresses.^b

^a Meagher, "Anti-corruption agencies", p. 83.

^b *Ibid.*, p. 82.

135. As ACAs develop more sophisticated monitoring systems, it is important that they collect and share performance metrics, including on the effectiveness of their prevention efforts, caseload statistics and stakeholder engagement. Most ACAs are also required to publish their financial audit reports.

Reporting on the implementation of anti-corruption treaty obligations in Senegal

In Senegal, the annual report of the National Office against Fraud and Corruption includes information on the extent to which the agency implements the country's anti-corruption treaty obligations.

136. In addition to annual reports, a number of ACAs have begun to collect and share more regular data on their activities, harnessing the power of the Internet and new information and communications technologies to publish and share information quickly and at lower cost.

Reports published online in Sierra Leone, Sri Lanka, Ukraine and the United Kingdom

The Sri Lankan Commission to Investigate Allegations of Bribery or Corruption uses its website to publish a progress report every six months, as well as regular activity updates every 15 days, which contain updated information on the number of complaints, investigations and convictions handled by the Commission, although confidentiality requirements restrict the amount of detail reported.^a That information is useful for the media and is produced in accessible formats. The Sierra Leone Anti-Corruption Commission produces a monthly update on its activities and complaints received, disaggregated by gender and age, which is shared in local groups on WhatsApp, a common networking tool used throughout the country. The monthly update is also sent to ministries and government departments, which are given one month to respond. The National Anti-Corruption Bureau in Ukraine publishes activity reports online every six months; researchers have encouraged the publishing of data in open formats to enable more detailed analysis. The website of the Serious Fraud Office in the United Kingdom provides detailed information about cases that are undergoing prosecution; information on ongoing investigations is published only when it is in the public interest in order to avoid jeopardizing such investigations.^b

^aSri Lanka, Commission to Investigate Allegations of Bribery or Corruption, Media, Resources, "Reports". Available at www.ciaboc.gov.lk.

^bUnited Kingdom, Serious Fraud Office, "Our cases: our policy on making information about our cases public". Available at www.sfo.gov.uk.

Availability of reports to the public

137. Regardless of the authority to which an ACA officially reports, good practice suggests that ACAs should implement the values of transparency and accountability, which they are responsible for upholding, by choosing to publish their annual reports on their own websites in order to promote wider public dissemination and discussion of their mandates and activities. ACAs can also organize press briefings upon release of their reports to ensure that greater public attention is given to their work.

Press briefings upon release of reports in Maldives, Senegal, Sierra Leone and Tunisia

In Senegal, the head of the National Office against Fraud and Corruption organized a press briefing for the agency's first annual report, which was released in 2016 and received widespread attention in the national media. In Sierra Leone, the Anti-Corruption Commission holds a press conference to release its annual reports and proactively sends them to all international development partners and national ministries and departments. In Tunisia, the National Anti-Corruption Authority usually holds a national press conference to launch its annual report and distributes it to judges, members of Parliament, officials of other national institutions and journalists. The Authority also publishes the report on its website and shares it through social media. The Maldives ACA holds a media briefing to release its annual report and produces a summary version that is sent out to ministries, government departments and the media.

PUBLIC COMMUNICATION AND ENGAGEMENT (PRINCIPLE 16)

ACAs shall communicate and engage with the public regularly in order to ensure public confidence in their independence, fairness and effectiveness.

Commentary

138. Article 13 of the Convention calls for measures to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness. In the context of the work of ACAs, experience has shown that engaging directly with the public to explain the agencies' work and to encourage public support for their work can be invaluable to their efforts to fight corruption.⁴¹ Efforts to communicate with the public also serve an agency's own interests by building the credibility of the organization to withstand attacks from external parties by drawing on strong public support in times of crisis.⁴²

Communication with the public

139. ACAs have an interest in building public understanding of and trust in their work. It is important for ACAs to clearly communicate their activities, achievements and challenges to ensure that public expectations are regularly adjusted and aligned with what ACAs can realistically achieve. Ideally, ACAs will measure their own

⁴¹Guidance on this principle should be read in conjunction with principle 2, on collaboration, under which ACA partnerships with civil society are discussed, and with principle 15, on public reporting.

⁴²Quah, "Anti-corruption agencies in Asia Pacific countries", pp. 13–14; and De Jaegere, "Principles for anti-corruption agencies", p. 101.

performance. The performance measures of ACAs can be an important way to demonstrate their value to decision makers and the public, and communication and public discussion of the results can be a powerful tool for ACAs to build strong relations with citizens and the media, which is critical for improving their enabling environment.⁴³ Many ACAs report regularly on performance indicators such as the number of investigations and prosecutions undertaken or the number of training events, outreach events and awareness-raising campaigns organized.

140. Public communication is also useful to promote public engagement in the prevention mandates of ACAs and to encourage the public to submit complaints to ACAs. In some countries, ACAs have established communications departments dedicated to ensuring two-way information flows with the public using social media and innovative technologies.

Two-way communication with the public in Indonesia, Maldives, Sierra Leone and Sri Lanka

In Sierra Leone, the ACA has developed a mobile phone application to reduce corruption in public service delivery areas by facilitating the reporting of corruption to the ACA, with the ACA paying for the data used by complainants. The ACA also has a free phone number for reporting corruption. The public may submit anonymous complaints or reports on the agency's website. The Indonesian Corruption Eradication Commission uses a call centre, text messaging, WhatsApp and social media (Twitter, Instagram and Facebook) to engage in two-way communication with and to receive complaints from the public. The Commission's Twitter account includes an "Ask the Commissioners" feature that enables members of the public to communicate more directly with the leadership of the Commission. In Sri Lanka, the Commission to Investigate Allegations of Bribery or Corruption has eight different methods for the public to file complaints, including through its website and a dedicated anti-corruption hotline. Maldives gives complainants a specific complaint number that they can use to check on the status of their complaints by text message or on the web.

141. Experience has shown that these information and communications technology-based options have been very effective, though some ACAs have advised that care needs to be taken when relying on social media as a communications tool, as it may create public expectations that cannot be met. Ideally, the technologies should be a component of a systematic communications strategy developed with input from all the prevention and investigation teams, as their support is critical to ensuring impactful communication. To encourage whistle-blowers to report suspicions, ACAs should also be encouraged to establish secure and confidential mechanisms for reporting (e.g., whistle-blower platforms).

142. Many ACAs establish structured relationships with the media as a tool for effective communication with the public.

⁴³Elin Bergman and Francesca Recanatini, "Anti-corruption agencies: measuring their output, outcome and impact", 2015 (unpublished).

Communication with the media in Hong Kong, China, Croatia, Indonesia and Maldives

The Independent Commission against Corruption in Hong Kong, China, has a dedicated press office of about 10 staff members responsible for engaging with the local press. In Indonesia, the Corruption Eradication Commission regularly interacts with the media, with an average of about three stories per day appearing in the national press. This has helped the institution to build a strong public profile and maintain its independence for a long time despite attacks. The Commission also has its own dedicated radio and television channels to disseminate information, including on the Internet. In Maldives, the ACA holds monthly press briefings, and a media officer works closely with journalists to provide them with information concerning the Commission's activities. In response to an initially difficult relationship with the media, the Office for the Suppression of Corruption and Organized Crime in Croatia required all of its prosecutors to undergo media training to improve their skills in answering questions from the media, and its media department proactively reached out to journalists to develop more flexible and cooperative relations with the press, thus enabling the press to correct misunderstandings and counter disinformation quickly, including by using the Office's own publicly available material.⁹

⁹Kuris, "Cleaning house", p. 8.

143. Article 13 of the Convention calls for ensuring that the public has effective access to information and respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. Article 10 of the Convention reinforces this guidance by specifically recognizing that public reporting is critical to addressing corruption and promoting public accountability. Article 10 (a) requires public bodies to adopt procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of a public administration. These provisions make it clear that transparency is essential to the fight against corruption.

144. ACAs have a duty to promote transparency by ensuring that they have internal policies on access to information that complement national legislation on the right to information.⁴⁴ However, information requests regarding investigations may be subject to confidentiality requirements. ACAs should align their internal disclosure policies with key global transparency initiatives, such as the Open Government Partnership and the International Open Data Charter.

⁴⁴Elaine Byrne, Anne-Katrin Arnold and Fumiko Nagano, *Building Public Support for Anti-Corruption Efforts: Why Anti-Corruption Agencies Need to Communicate and How* (Washington D.C., World Bank, 2010).

Right-to-information legislation applicable to agencies in Indonesia, Maldives and Sri Lanka

The ACAs in Indonesia, Maldives and Sri Lanka all report that they are subject to their national right-to-information legislation, which requires proactive disclosure of basic information and timely responses to requests for information.

Engagement with the public

145. ACA engagement with the public can take various forms. In some ACAs, such engagement is reflected in the agency's institutional set-up, notably when civil society is represented in its governing bodies.

Civil society engagement in oversight of agencies in Mexico and Sierra Leone

In Sierra Leone, the law requires the ACA to create an Advisory Board on Corruption comprising seven members, who shall be "appointed from among persons representing civil society, professional bodies, religious organizations, educational institutions, chieftaincy institutions and the media, having relevant experience and of conspicuous probity".^a In Mexico, constitutional amendments enacted in 2015 and complemented by new anti-corruption legislation established a new national anti-corruption prosecutor, whose work is overseen by three constitutionally entrenched committees, one of which is a civil society committee made up of five citizens who have distinguished themselves for their contributions to transparency, accountability and the anti-corruption movement and are nominated and endorsed by the Senate.^b

^a Sierra Leone, Anti-Corruption Act 2008, sect. 22 [2].

^b Matteson Ellis, "Important aspects of Mexico's national anti-corruption system: part 1", *FCPAmericas*, 27 March 2017; and Network for Integrity, "Mexico's national anti-corruption system", 8 March 2017.

146. In other countries, considerable resources have been devoted to decentralizing ACA operations to ensure that the work of the ACA is closer to the people.

Subnational offices in Malaysia, Peru and Sierra Leone

The Malaysian Anti-Corruption Commission has 16 state offices supported by additional subordinate branches, which are set up both to accept complaints and to undertake local outreach. In Peru, the ACA has set up 25 provincial-level offices that bring together representatives from the public sector, private sector and civil society to coordinate and plan anti-corruption activities and to establish a culture of integrity. In Sierra Leone, the ACA has three regional offices to support the work of its headquarters.

147. Article 13 of the Convention calls for States parties to undertake public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula. Many ACAs dedicate resources to reaching out to citizens through a variety of community programmes, with considerable attention focused on students at the primary and secondary levels in an effort to build a cohort of anti-corruption citizens at a young age.

Youth engagement stimulated by agencies in Botswana, Hong Kong, China, Fiji, Jamaica, Lithuania, Mauritius and Singapore

The Independent Commission against Corruption in Hong Kong, China, has a community relations department that is responsible for outreach and has a staff of about 180. It has an outreach programme that is specifically targeted at young people of school age and delivered in the form of information packages to help teachers inculcate students with anti-corruption approaches. The Commission also organizes seminars for university students who are preparing to enter the business sector, and it produces television and radio programmes and regularly hosts videos on its website.

In Jamaica, the Integrity Commission reached out to young people in youth detention centres to engage them on issues concerning the security services and participated in youth fairs in advance of International Anti-Corruption Day.

In Lithuania, the Special Investigative Service was originally set up in 2000 to focus on law enforcement, but the Service realized at an early stage that prevention through education was important to achieving its mandate and undertook an ambitious programme of anti-corruption curriculum development to address systematic cultural issues regarding corrupt practices.^a Recognizing its limited internal capacities to embark on such a programme, the Service developed partnerships across the education sector, including with the Modern Didactics Centre to develop a curriculum approach that integrated anti-corruption learning into existing classes rather than burdening teachers and students with stand-alone classes.^b

The Corrupt Practices Investigation Bureau in Singapore reaches out to students from secondary schools, junior colleges and polytechnics through its Learning Journey programme,^c while the Botswana Directorate on Corruption and Economic Crime integrated corruption issues into school curricula, supported by school fairs and exhibitions and competitions in public speaking, writing and art, and engaged with teachers and students to establish anti-corruption clubs in secondary schools.^d

In Mauritius, the Independent Commission against Corruption targeted youth with its media campaigns and social media activities, such as online interactive debates with Commission leaders. The Commission also worked directly with the education ministry to integrate student anti-corruption activities into school activities, including through competitions in speaking, writing and design; special International Law Day activities; curricular modules for value-based education; and secondary-school integrity clubs – an idea adopted from Hong Kong, China.^e

Youth engagement stimulated by agencies in Botswana, Hong Kong, China, Fiji, Jamaica, Lithuania, Mauritius and Singapore (continued)

The Fiji Independent Commission against Corruption is developing the Good Kiddo programme, which has been conducted for pupils at the primary level, and the Commission is piloting a national anti-corruption curriculum programme for pupils at the primary and secondary levels.^f

^a Maya Gainer, "Shaping values for a new generation: anti-corruption education in Lithuania, 2002–2006" (Princeton, New Jersey, Innovations for Successful Societies, Princeton University, June 2015).

^b *Ibid.*, pp. 4–10.

^c Chinedu Nwokorie and Viinamäki, "Legitimacy building of anti-corruption agencies in five countries", p. 5.

^d Gabriel Kuris, "Managing corruption risks: Botswana builds an anti-graft agency, 1994–2012" (Princeton, New Jersey, Innovations for Successful Societies, Princeton University, 2013), p. 9.

^e Kuris, "From a rocky start to regional leadership", pp. 11–12.

^f Response by Fiji to the UNODC survey of ACAs, 22 July 2018.

148. In many countries, ACAs undertake public surveys on corruption to assess the views of the public and identify areas requiring more preventive and investigative attention, as well as to track their progress in addressing corruption and improving public perceptions. Experience suggests that third parties should administer such surveys to ensure the reliability of data collected.

Public surveys commissioned by agencies in Armenia, Latvia, Tajikistan and Ukraine

Examples of public surveys can be found in Armenia, Latvia, Tajikistan and Ukraine, which used their surveys to assess how the population and businesses perceive the causes of corruption, their attitudes towards corruption or how well respondents are informed about government anti-corruption efforts.^a Some surveys also included questions about ACA performance,^b which allowed ACAs to assess the public's perceptions of their effectiveness and to improve their operations in the light of the findings.

^a OECD, *Specialised Anti-Corruption Institutions*, p. 25.

^b Hong Kong Independent Commission against Corruption, Annual Survey, "Objectives and methodology". Available at www.icac.org.hk/en/survey/obj/index.html.



Conclusion

149. ACAs play a crucial role in preventing and combating corruption. Armed with effective tools and resources to carry out their mandated functions and supported by strong safeguards and oversight mechanisms, their work can be further enhanced. The evaluation framework contained in the annex is aimed at assisting Member States in assessing the systems in place in their countries to enable the work of ACAs.

Annex

EVALUATION FRAMEWORK

INSTITUTION

Mandate		
Does your country have one or more anti-corruption agencies (ACAs) for each of the following anti-corruption mandates: <i>(a)</i> prevention; <i>(b)</i> education; <i>(c)</i> awareness-raising; <i>(d)</i> investigation; and <i>(e)</i> prosecution?	Yes	No
Explanatory notes:		
Is each ACA equipped with adequate powers to effectively discharge its mandates?	Yes	No
Explanatory notes:		
Has any review taken place to avoid duplication in mandates?	Yes	No
Explanatory notes:		

Collaboration		
Does the law require or allow the ACA to collaborate with other State agencies (including other ACAs) to tackle corruption?	Yes	No
If no, does anything in the law prohibit collaboration?	Yes	No
If yes, does such collaboration take place in practice?	Yes	No
If yes, is such collaboration formalized through memorandums of understanding or other formal agreements?	Yes	No
Explanatory notes:		
Does the law call on and/or empower other State agencies to work with the ACA?	Yes	No

Collaboration (continued)		
Does such collaboration take place in practice?	Yes	No
If yes, is such collaboration formalized through memorandums of understanding or other formal agreements?	Yes	No
Explanatory notes:		
Does the law require or allow the ACA to collaborate with civil society to tackle corruption?	Yes	No
Does such collaboration take place in practice?	Yes	No
If yes, is such collaboration formalized through memorandums of understanding or other formal agreements?	Yes	No
Explanatory notes:		
Does the law require or allow the ACA to collaborate with the private sector to tackle corruption?	Yes	No
Does such collaboration take place in practice?	Yes	No
If yes, is such collaboration formalized through memorandums of understanding or other formal agreements?	Yes	No
Explanatory notes:		
Does the law require or allow the ACA to collaborate with foreign ACAs with similar mandates and/or international bodies, mechanisms or processes to tackle corruption?	Yes	No
Does such collaboration take place in practice?	Yes	No
If yes, is such collaboration formalized through memorandums of understanding or other formal agreements?	Yes	No
Explanatory notes:		

Permanence		
Was the ACA established by your national Constitution?	Yes	No
Explanatory notes:		
If the ACA was not established by your national Constitution, was it established by a law passed by a legislative body?	Yes	No
Explanatory notes:		
What is the current status of anti-corruption law reform in relation to your country's ACA?		
Explanatory notes:		

LEADERSHIP

Appointment		
Does the law require any or all of the following criteria for the ACA leadership:	Yes	No
Minimum education or experience qualifications?	Yes	No
Demonstrated moral character or integrity?	Yes	No
No criminal convictions and/or pending criminal cases?	Yes	No
No recent active political party membership?	Yes	No
Explanatory notes:		
Is there a public call for candidates for ACA leadership?	Yes	No
Explanatory notes:		
Are candidates for ACA leadership publicly vetted?	Yes	No
Explanatory notes:		
If a selection committee is involved, is it representative of different strands in society?	Yes	No
Explanatory notes:		
Does the process of appointing the ACA leadership require transparent, inclusive, accountable cross-party parliamentary vetting and/or endorsement of the final candidate?	Yes	No
Explanatory notes:		

Continuity		
Does the relevant ACA law include a provision for the automatic delegation of powers in the absence of the ACA head?	Yes	No
Explanatory notes:		
Does the relevant ACA law include a maximum time period for the post of ACA head to be left vacant?	Yes	No
Explanatory notes:		

Removal		
Does the ACA head have a minimum fixed term of appointment under the law of no less than four years?	Yes	No
Explanatory notes:		

Removal <i>(continued)</i>		
Does removal of the ACA head require a similar process to be followed as for the removal of the Chief Justice?	Yes	No
Explanatory notes:		
Does the process for removing the head of the ACA require that certain limited grounds of misbehaviour or incapacity be proven in order to be triggered?	Yes	No
Does the ACA head have a right to publicly defend himself or herself against such charges?	Yes	No
Explanatory notes:		
Does the process for removing the head of the ACA involve more than one branch of Government?	Yes	No
If the legislature is involved, is a special majority vote required in order to approve the removal?	Yes	No
If the judiciary is involved, does a specially constituted tribunal have to approve the removal?	Yes	No
Explanatory notes:		

HUMAN RESOURCES

Ethical conduct		
Is the ACA subject to a comprehensive code of conduct?	Yes	No
Are all staff required to comply with the code of conduct?	Yes	No
Are Commissioners or heads of the ACA covered by a code of conduct?	Yes	No
Explanatory notes:		
Does the ACA provide regular training for staff on the code of conduct and the resulting obligations?	Yes	No
Explanatory notes:		
Does the code of conduct include an oversight and compliance mechanism?	Yes	No
Is there an impartial mechanism for making determinations regarding compliance?	Yes	No
Are there sufficient penalties for breaching the code of conduct?	Yes	No
Explanatory notes:		

Internal accountability		
Does the ACA have rules and standard operating procedures in place to provide guidance on exercising the powers of the ACA (particularly in relation to complaints handling, investigations and prosecutions)?	Yes	No
Explanatory notes:		
Does the ACA law require the leadership and staff of the ACA to declare assets and conflicts of interest?	Yes	No
Explanatory notes:		
Does the ACA have a staff monitoring process in place to track whether staff are using the powers of the ACA legally and properly?	Yes	No
Explanatory notes:		
Does the ACA have internal staff disciplinary processes in place?	Yes	No
Explanatory notes:		
Do the disciplinary processes afford staff the right of reply and appeal?	Yes	No
Explanatory notes:		
Are disciplinary processes being used effectively in practice?	Yes	No
Explanatory notes:		

Immunity		
Does the law provide specific immunities for ACA heads and employees for acts carried out as part of their jobs?	Yes	No
Explanatory notes:		
Does the law provide specific protection to ACA heads and employees from malicious civil and criminal proceedings for acts carried out outside their jobs?	Yes	No
Explanatory notes:		

Authority over human resources		
Does the ACA have the power to recruit and dismiss its own staff?	Yes	No
Explanatory notes:		

Authority over human resources <i>(continued)</i>		
Are laws, rules, policies and/or procedures in place that clearly set out a transparent, merit-based process for recruiting staff?	Yes	No
Explanatory notes:		
Are laws, rules, policies and/or procedures in place that clearly set out the process for disciplining and dismissing staff?	Yes	No
Explanatory notes:		

FINANCIAL RESOURCES

Remuneration		
Does the law empower the ACA and/or its board to determine appropriate remuneration levels to recruit qualified staff?	Yes	No
Explanatory notes:		
Are remuneration levels currently competitive and sufficient to attract qualified staff, in comparison with pay levels for similar positions in other agencies or the private sector?	Yes	No
Explanatory notes:		
Is the ACA budget sufficient to pay competitive salary rates for staff?	Yes	No
Explanatory notes:		

Adequate and reliable resources		
Is there a separate budget line for the ACA in the national budget voted on by the legislature?	Yes	No
Explanatory notes:		
Is there a legally guaranteed minimum budget for the ACA?	Yes	No
Explanatory notes:		
Does the ACA receive its funding early in the financial year and/or in a predictable manner?	Yes	No
Explanatory notes:		
Is the current ACA budget sufficient to ensure that the ACA can effectively discharge its mandates?	Yes	No
Explanatory notes:		

Is the current ACA budget sufficient to support capacity development for staff and/or operational improvements within the ACA?	Yes	No
Explanatory notes:		
Assessed over the past three years, has the ACA budget been relatively stable and/or grown to match the development of the ACA?	Yes	No
Explanatory notes:		

Financial autonomy		
Does the ACA have control over the management of its budgetary resources?	Yes	No
Explanatory notes:		
Does the ACA comply with international and national accounting standards?	Yes	No
Explanatory notes:		
Does the ACA publish an annual audit report?	Yes	No
Explanatory notes:		

OVERSIGHT

External accountability		
Are the intrusive and coercive powers of the ACA subject to judicial oversight?	Yes	No
Explanatory notes:		
Is the overall performance of the ACA subject to oversight by a cross-party committee of the legislative body?	Yes	No
Explanatory notes:		
Is the management of cases by the ACA subject to some form of external oversight?	Yes	No
Explanatory notes:		
Does any relevant oversight body have powers to give guidance or direction to the ACA?	Yes	No
Explanatory notes:		
Are the accounts of the ACA audited by an external auditing body?	Yes	No
Explanatory notes:		

Public reporting		
Is the ACA required to report on its activities?	Yes	No
If yes, is the report required to be public?	Yes	No
If yes, does the ACA produce a public report on its activities at least once a year?	Yes	No
Explanatory notes:		
Does the report of the ACA include information on the following:		
Performance of the ACA, broken down against each specific mandate (e.g., prevention, education and awareness-raising, investigations and prosecutions)?	Yes	No
Expenditures, including outcome reporting and audit information?	Yes	No
Implementation of treaty obligations (e.g., reporting under the United Nations Convention against Corruption and under regional conventions against corruption)?	Yes	No
Explanatory notes:		
Is an annual or other report submitted to a public body (e.g., Parliament) for public discussion?	Yes	No
If yes, is the report publicly reviewed/discussed in practice?	Yes	No
Explanatory notes:		

Public communication and engagement		
Does the ACA have sufficient resources (human and financial) dedicated to undertaking public communication and engagement?	Yes	No
Explanatory notes:		
Does the ACA regularly communicate with the public? If yes, what methods have been used?	Yes	No
Does the ACA undertake impact assessments of its public outreach efforts?	Yes	No
If yes, has its public engagement been shown to be impactful?	Yes	No
Explanatory notes:		
Does the ACA engage with the media on its anti-corruption communication and awareness activities?	Yes	No
If yes, has its media engagement been impactful?	Yes	No
Explanatory notes:		

Does the ACA have its own website?	Yes	No
If yes, is the website regularly updated with ACA reports and news?	Yes	No
Explanatory notes:		
Does the ACA commission any public surveys on corruption and anti-corruption efforts in the country?	Yes	No
If yes, have they been useful in monitoring changing behaviours and/or in support of anti-corruption advocacy?	Yes	No
Explanatory notes:		



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