



## Anti-corruption policy making in practice: What can be learned for implementing Article 5 of UNCAC?

Report of six country case studies:  
Georgia, Indonesia, Nicaragua, Pakistan, Tanzania and Zambia  
(Includes full text of all the country case studies)

Edited by  
Karen Hussmann

**U4 REPORT 1:2007**



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## **U4 Reports**

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U4 Anti-Corruption Resource Centre

Chr. Michelsen Institute

P.O. Box 6033 Postterminalen,

N-5892 Bergen, Norway

Tel: + 47 55 57 40 00

Fax: + 47 55 57 41 66

E-mail: [U4@U4.no](mailto:U4@U4.no)

[www.U4.no](http://www.U4.no)

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## Contents

<b>ACKNOWLEDGEMENTS .....</b>	<b>VI</b>
<b>EXECUTIVE SUMMARY .....</b>	<b>VII</b>
<b>PART 1: SYNTHESIS REPORT:</b>	
<b>1 INTRODUCTION TO ANTI-CORRUPTION POLICY FRAMEWORKS.....</b>	<b>15</b>
1.1 WHAT ARE ANTI-CORRUPTION POLICIES? .....	17
1.2 WHAT TYPES OF ANTI-CORRUPTION POLICY FRAMEWORK CAN BE IDENTIFIED?.....	20
1.2.1 <i>Explicit anti-corruption policy documents</i> .....	20
1.2.2 <i>Legislative agendas for transparency or anti-corruption</i> .....	21
1.2.3 <i>Targeted approach focusing on key areas for anti-corruption reform</i> .....	23
1.2.4 <i>Embedded anti-corruption approach through public sector reform</i> .....	24
1.2.5 <i>Selected fixes and implicit anti-corruption policies</i> .....	24
1.3 ANTI-CORRUPTION POLICY DOCUMENTS AND UNCAC IMPLEMENTATION.....	25
<b>2 HOW DO ANTI-CORRUPTION POLICY FRAMEWORKS EVOLVE? .....</b>	<b>26</b>
2.1 BRIEF BACKGROUND AND COMMONALITIES OF THE COUNTRIES STUDIED .....	26
2.2 DESIGN OF ANTI-CORRUPTION POLICY DOCUMENTS .....	28
2.2.1 <i>National ownership</i> .....	29
2.2.2 <i>Policy making process and participation</i> .....	30
2.2.3 <i>Information and knowledge</i> .....	31
2.2.4 <i>Content, priorities, and sequencing</i> .....	32
2.2.5 <i>Linkages with other government policies and reforms</i> .....	34
2.3 IMPLEMENTATION OF ANTI-CORRUPTION STRATEGIES AND POLICIES .....	34
2.3.1 <i>Coordination – roles and responsibilities</i> .....	34
2.3.2 <i>Communication</i> .....	35
2.3.3 <i>Resources</i> .....	35
2.4 MONITORING AND EVALUATION .....	36
2.5 ROLE OF DEVELOPMENT PARTNERS.....	36
<b>3 CONCLUSIONS DRAWN FROM THE COUNTRY EXPERIENCES .....</b>	<b>38</b>
<b>4 ISSUES TO CONSIDER FOR FURTHER POLICY DEBATE ON UNCAC IMPLEMENTATION</b>	<b>44</b>
4.1 WHAT ARE THE OPTIONS FOR “EFFECTIVE AND COORDINATED ANTI-CORRUPTION POLICIES”? .....	45
4.1.1 <i>Anti-corruption strategy or alternative approach for coordinated policies?</i> .....	46
4.1.2 <i>Integration with core policies – potential for an embedded approach?</i> .....	47
4.1.3 <i>Sectoral approaches – complement or substitute for national strategies?</i> .....	47
4.1.4 <i>How can appropriate prioritisation and sequencing be achieved?</i> .....	48
4.1.5 <i>Could monitoring and evaluation of ongoing governance policies/reforms from an anti-</i> <i>corruption angle help strengthen anti-corruption prevention?</i> .....	48
4.1.6 <i>What about arrangements for implementation and coordination?</i> .....	49
4.2 FIGHTING CORRUPTION BY FIGHTING CORRUPTION – IS THIS THE WAY TO GO? .....	50
4.3 ISSUES FOR DEVELOPMENT PARTNERS TO CONSIDER .....	50
<b>5 BIBLIOGRAPHY .....</b>	<b>54</b>
<b>PART 2: COUNTRY CASE STUDIES:</b>	
<b>A: GEORGIA.....</b>	<b>58</b>
<b>B: INDONESIA.....</b>	<b>87</b>
<b>C: NICARAGUA .....</b>	<b>114</b>
<b>D: PAKISTAN .....</b>	<b>148</b>
<b>E. TANZANIA .....</b>	<b>174</b>
<b>F: ZAMBIA .....</b>	<b>204</b>
<b>ANNEX – METHODOLOGICAL APPROACH FOR COUNTRY CASE STUDIES.....</b>	<b>233</b>

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This research project was inspired by discussions held at the first Conference of States Parties (CoSP) regarding the implementation of the United Nations Convention against Corruption (UNCAC) and the kind of technical assistance needed for this purpose. As the U4 Anti-corruption Resource Centre<sup>1</sup> pursues as one of its priorities the provision of knowledge on UNCAC as well as a pool of good practice for its implementation, the idea for this study emerged at the CoSP of 2006 in Jordan and its findings will be officially presented at the next CoSP in Indonesia.

At this point, we would like to thank the U4 partner agencies not only for financing this study, where the main credit goes to the Gesellschaft für Technische Zusammenarbeit (GTZ), but also for their invaluable support to the preparation of the country case studies by identifying local researchers, establishing contacts, and providing information and logistical support where needed.

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## Executive Summary

The United Nations Convention against Corruption (UNCAC) has been recognised as a reference framework for the fight against corruption, unique because of its comprehensive coverage based on a common understanding among a broad range of States Parties. While it provides new opportunities and guidance for national policies and anti-corruption measures, it also poses considerable new challenges, for instance the temptation to undertake too many anti-corruption measures at the same time. In order to address the multifaceted phenomenon of corruption, Article 5 of UNCAC stipulates, among other provisions, that “*Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies ...*”. As a fundamental preventive provision, Article 5 puts emphasis on a strategic approach and is a gateway for the implementation of UNCAC provisions. The U4 Anti-Corruption Resource Centre therefore found it relevant to study experiences from existing anti-corruption policy regimes and analyse what can be learnt from them.

From among the many different forms that anti-corruption policies can take, the present study explores the experience of six countries that have pursued explicit national anti-corruption policies or strategies. This focus was chosen because it is likely that such an approach will be pursued with greater enthusiasm as States Parties seek to fulfil Article 5 of UNCAC.<sup>2</sup>

**The main objective of this study is to provide insight into how countries have so far grappled with the challenges of anti-corruption policy making and implementation, to analyse what this experience can tell us and to identify issues for consideration in future policy making, both for States Parties and for development partners.**<sup>3</sup> The purpose is to explore in depth how anti-corruption policies or strategies came into being in six countries, what the catalysts and driving forces were, which criteria were used to select and prioritise reforms, how they were implemented, and what the role of development partners was in the overall process. The study is based on an extensive literature review, empirical research through in-depth country case studies from *Georgia, Indonesia, Nicaragua, Pakistan, Tanzania and Zambia*, as well as the concluding analysis of what can be learned from this experience.

**Section I** provides the background to this research project and looks at the basic features of anti-corruption policies. It also depicts various ways in which anti-corruption policy frameworks<sup>4</sup> have emerged around the world in order to illustrate different possible ways in which the implementation of Article 5 of UNCAC may be pursued. For example, some countries have chosen to develop explicit broad national strategies, others pursue more selective policies focused on improving integrity, transparency and accountability in certain key areas of the public administration, and yet others have opted for embedding anti-corruption measures in broader public sector reforms. Further, certain countries set out on legislative transparency and anti-corruption agendas, while in others no specifically declared anti-corruption policies can be found, but rather implicit ones. It should be noted, though, that boundaries between these approaches are sometimes blurred.

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<sup>2</sup> Other approaches to the implementation of Article 5 emerge in the course of this analysis, and are explored in detail in section 4.1.

<sup>3</sup> The term “development partners” refers to all bi- and multilateral agencies that provide development aid and technical assistance to partner countries.

<sup>4</sup> With the term “anti-corruption policy framework” we refer to a set of anti-corruption policies that have emerged in a specific country context and that can be seen as following a broader national level logic or nationality steered anti-corruption approach.

**Section II** contains the main findings of the empirical research on the six countries mentioned above. It examines to what extent key features for effective public policy making, such as national ownership, stakeholder participation, knowledge-based design, priority setting, coordination, monitoring and evaluation, are found in practice and what shortcomings have been experienced. Given that anti-corruption policies are interdependent with other core governmental policies and reforms, it explores how these linkages are reflected in practice. Finally, special emphasis is put on the role development partners play throughout the anti-corruption policy cycle.

**Section III** summarises what we can learn from experience in the six countries studied. The political response to perceived widespread corruption in most of the countries studied consists in the development of a broad national anti-corruption policy or strategy. Nevertheless, in most countries this approach has not been overly successful for a variety of reasons, amongst which the following merit special attention:

- Not enough attention has been given to the political dimension of anti-corruption policies: in particular, the high-level political will that gave birth to anti-corruption strategies could not be maintained from the beginning to the end of the governmental cycle, not to speak of continuation into the periods in office of new governments;
- Implementing agencies do not own the strategies: the high-level leadership of ministries and public agencies which have to implement the lion's share of the measures contained in anti-corruption policies and strategies did not participate actively in their design, and political agreements and hence committed buy-in were weak;
- The tension between comprehensive and targeted approaches remains unresolved: most anti-corruption strategies were not strategic. They did not set priorities, nor did they consider a sequenced roll-out across agencies, allowing for pilot testing and keeping in line with capacities and resources.
- The coordinating agency often lacks authority: the public agencies charged with the coordination and monitoring of anti-corruption strategies usually did not have the authority, political backing or capacity to encourage or compel powerful line ministries to implement envisioned measures and report on progress;
- Ongoing technical advice and mentoring is absent: public agencies that have to implement anti-corruption measures frequently did not have the required capacities to "mainstream" these measures into their daily business operations and anti-corruption lead agencies often lacked the capacity to remedy this situation;
- Monitoring and evaluation has been almost entirely ignored: self-assessments did not bring results and external reviews of progress, e.g. by parliaments, research institutes and universities, had not even been foreseen;
- The lack of information for and communication with implementing agencies, political actors, the media and the public hinders the creation of a sustained political debate and thus of political pressure to move anti-corruption policies forward;
- The role of development partners has been problematic: although important support was provided, development partners often failed to help partner countries creatively to remedy the above mentioned shortcomings. They also often lack sufficient senior expertise on the ground to help identify alternative avenues and provide appropriate guidance.

These main findings do not suggest that there are no serious players in each country studied who firmly believe in the need and usefulness of anti-corruption strategies and who actively engage in

the fight against corruption. They tell us rather that anti-corruption strategies in their current form are easily derailed from their original track into overly ambitious and unmanageable undertakings. The analysis of some key features of policy making provides some insights into why this happens:

With regard to **national ownership**, anti-corruption policies and strategies are indeed based on initial political will and clearly pursue political objectives. However, these objectives tend to be concentrated on strengthening the government's power base and maintaining the status quo. On the other hand, formal democratic processes have had positive effects in that they have allowed the public to voice, in particular through elections, demonstrations and media reports, a demand for anti-corruption policies. But the lack of mechanisms for continuing participation throughout the full policy cycle impedes the effectiveness of these anti-corruption efforts.

In their **content**, most of the anti-corruption policies and strategies studied focus on norms and institutions with limited effects on performance in terms of corruption control. The notable mismatch between the political nature of the problem and technocratic solutions is likely to result in superficial interventions. In addition, envisioned solutions are not based on adequate diagnostics of their causes and often diagnostics are entirely lacking. The case studies further reconfirm that the politically attractive punitive approach to corruption needs to be accompanied by the will to change systems and attitudes. In addition, integration with other core governance policies and reforms is taking place on paper but not in practice. Finally, it emerges that addressing corruption risks in development aid has not been part of national anti-corruption strategies.

In terms of **implementation, coordination and monitoring**, it is particularly worrisome to note that this crucial phase of the policy cycle does not receive sufficient political and operational attention. Leadership and oversight are often characterised by a mismatch between institutional capacities and ambitious objectives. Insufficient information and communication with key stakeholders create further opacity. Also, it is not clear how an approach of self-reform through self-assessment is supposed to work, in particular when one takes into account that institutions anywhere in the world tend to be resistant to change. Last but not least, the lack of meaningful participatory monitoring and evaluation seems to convert anti-corruption policies into paper tigers.

In addition, some **international factors** need to be considered. First, as in many other fields of international assistance the role of development partners has been ambivalent in the countries studied, as already mentioned above. International anti-corruption treaties have certainly served as catalysts for legal reform. But so far too little attention has been paid to implementation, both to avoid the distortion of regulations implementing these laws and to put them effectively into practice.

**Section IV** examines the potential options for the implementation of Article 5 of UNCAC, that is, for “effective and coordinated anti-corruption policies”. On the one hand, this section aims at providing States Parties with some issues that they may want to consider when approaching the implementation of UNCAC, in particular of Article 5. On the other hand, it offers suggestions to be considered by development partners when providing assistance to States Parties for UNCAC implementation.

First of all, it seems of great importance that **States Parties** recognise the need to build high-level political agreements in order to develop a strategic vision about how to fight corruption in a given country. The challenge lies in making an anti-corruption policy framework “strategic” instead of elaborating long wish lists. For this purpose, it is also important to acknowledge that there are no ready-made or definite solutions but rather pertinent questions for States Parties to consider when designing their anti-corruption policy framework, such as:

- Should a single anti-corruption strategy or an alternative approach for coordinated policies be chosen and what conditions influence the choice?
- Would integration with government core policies and reforms provide a potential alternative?
- Are sectoral approaches an alternative? If so, under what conditions and would they complement or substitute for an overarching national approach?
- How can appropriate prioritisation and sequencing be achieved?
- Could monitoring of ongoing policies and reforms from an anti-corruption perspective help to strengthen anti-corruption prevention?
- What kind of institutional arrangements for implementation and coordination is necessary for the approach chosen?

No matter what form the anti-corruption policy framework may take, results from this study suggest that States Parties may want to consider more modest goals and objectives, stronger implementation modalities, in particular through clearer implementation arrangements, monitoring, and concrete prioritisation of issues, in particular those that constitute battles which can be won in the short to medium term (e.g. service delivery in key areas).

Finally, fighting corruption by directly addressing it may not be the most suitable approach in all contexts. Rather, the question arises whether an approach that concentrates on widely accepted antidotes to corruption, such as transparency and accountability, might be more promising. Another basic issue that also should be considered is whether a State Party wants to formulate a “negative”, that is anti-corruption, approach, or a “positive”, that is pro-integrity or transparency, approach.

With regard to the **development partners**, there are a series of issues for them to consider when designing and deciding upon assisting States Parties with UNCAC implementation, again in particular of Article 5:

- First and foremost, they should use and promote UNCAC as a binding legal and political international commitment to further good governance.
- Secondly, they should recognise Article 5 as the “gateway” for the implementation of UNCAC, but not as an automatic obligation to develop one single national anti-corruption strategy. For this purpose, they should help States Parties to identify different options for coordinated policy frameworks and provide experience-based information about their advantages and disadvantages.
- Third, development partners need to make every effort to strengthen the links between anti-corruption and governance reforms, which also entails overcoming certain “silo” visions that continue to persist within specific sectoral approaches as well as among the experts working in them. Integrating or “mainstreaming” specific anti-corruption components into core reforms is key, as well as continuing training and mentoring of sector specialists in anti-corruption approaches.
- Fourth, they should promote open and transparent dialogue between governments, themselves, parliament and non-state actors to assess progress.
- Fifth, they should increase knowledge and understanding of corrupt practices and their forms, manifestations and dynamics, disseminate the findings widely and ensure public access to them.

- Sixth, development partners should invest much more in fostering effective and non-state monitoring and evaluation of anti-corruption policies, e.g. by parliaments, universities and civil society organisations, and at the same time support more effective internal monitoring.. This particularly important area would entail the not so attractive but highly pertinent issue of strengthening national information management systems. It would also entail supporting the production of non-state monitoring and evaluation materials.
- Seventh, despite progress at headquarters level and, for example, within OECD-DAC, development partners should make greater efforts to bring their actions at country level more in line with these OECD-DAC agreements, in particular with regard to donor coordination, harmonisation of aid and the joint “Principles for donor action in anti-corruption”.
- Finally, development partners should also review their collective reaction when partner governments do not live up to mutual agreements. In particular, the often portrayed dilemma of having to choose between non-tolerance of corruption and the pursuit of “bigger goals” such as poverty reduction needs to be questioned, as there is room for pragmatic “grey zone” approaches which would avoid an “either-or” answer.

By way of concluding, it should be reiterated that the study cautions against the applicability of one and the same approach to implementing Article 5 of UNCAC in all countries around the globe. Countries with different degrees of institutional capacity and diverse political contexts and social backgrounds will require and may want to choose varying modalities. In addition, the temptation to interpret “effective and coordinated anti-corruption policies” as the need for a single anti-corruption strategy certainly points towards one option, but there are several more. Last but not least, State Parties, where necessary and desired with the support of development partners, should consider pursuing anti-corruption work with effective modest targets instead of ambitious but unfeasible promises.



Anti-corruption policy making in practice:  
What can be learned for the implementation of  
Article 5 of UNCAC?

Synthesis report

Karen Hussmann

**U4 REPORT 1:2007 PART 1**



## Contents

<b>1</b>	<b>INTRODUCTION TO ANTI-CORRUPTION POLICY FRAMEWORKS.....</b>	<b>15</b>
1.1	WHAT ARE ANTI-CORRUPTION POLICIES? .....	17
1.2	WHAT TYPES OF ANTI-CORRUPTION POLICY FRAMEWORK CAN BE IDENTIFIED? .....	20
1.2.1	<i>Explicit anti-corruption policy documents</i> .....	20
1.2.2	<i>Legislative agendas for transparency or anti-corruption</i> .....	21
1.2.3	<i>Targeted approach focusing on key areas for anti-corruption reform</i> .....	23
1.2.4	<i>Embedded anti-corruption approach through public sector reform</i> .....	24
1.2.5	<i>Selected fixes and implicit anti-corruption policies</i> .....	24
1.3	ANTI-CORRUPTION POLICY DOCUMENTS AND UNCAC IMPLEMENTATION.....	25
<b>2</b>	<b>HOW DO ANTI-CORRUPTION POLICY FRAMEWORKS EVOLVE? .....</b>	<b>26</b>
2.1	BRIEF BACKGROUND AND COMMONALITIES OF THE COUNTRIES STUDIED .....	26
2.2	DESIGN OF ANTI-CORRUPTION POLICY DOCUMENTS .....	28
2.2.1	<i>National ownership</i> .....	29
2.2.2	<i>Policy making process and participation</i> .....	30
2.2.3	<i>Information and knowledge</i> .....	31
2.2.4	<i>Content, priorities, and sequencing</i> .....	32
2.2.5	<i>Linkages with other government policies and reforms</i> .....	34
2.3	IMPLEMENTATION OF ANTI-CORRUPTION STRATEGIES AND POLICIES .....	34
2.3.1	<i>Coordination – roles and responsibilities</i> .....	34
2.3.2	<i>Communication</i> .....	35
2.3.3	<i>Resources</i> .....	35
2.4	MONITORING AND EVALUATION .....	36
2.5	ROLE OF DEVELOPMENT PARTNERS.....	36
<b>3</b>	<b>CONCLUSIONS DRAWN FROM THE COUNTRY EXPERIENCES .....</b>	<b>38</b>
<b>4</b>	<b>ISSUES TO CONSIDER FOR FURTHER POLICY DEBATE ON UNCAC IMPLEMENTATION</b>	<b>44</b>
4.1	WHAT ARE THE OPTIONS FOR “EFFECTIVE AND COORDINATED ANTI-CORRUPTION POLICIES”? .....	45
4.1.1	<i>Anti-corruption strategy or alternative approach for coordinated policies?</i> .....	46
4.1.2	<i>Integration with core policies – potential for an embedded approach?</i> .....	47
4.1.3	<i>Sectoral approaches – complement or substitute for national strategies?</i> .....	47
4.1.4	<i>How can appropriate prioritisation and sequencing be achieved?</i> .....	48
4.1.5	<i>Could monitoring and evaluation of ongoing governance policies/reforms from an anti-corruption angle help strengthen anti-corruption prevention?</i> .....	48
4.1.6	<i>What about arrangements for implementation and coordination?</i> .....	49
4.2	FIGHTING CORRUPTION BY FIGHTING CORRUPTION – IS THIS THE WAY TO GO? .....	50
4.3	ISSUES FOR DEVELOPMENT PARTNERS TO CONSIDER .....	50
<b>5</b>	<b>BIBLIOGRAPHY .....</b>	<b>54</b>

# 1 Introduction to anti-corruption policy frameworks

The United Nations Convention against Corruption (UNCAC) recognises that corruption is a multifaceted phenomenon that results, among others, from weak governance systems and failing institutions with multiple interactions among each other. Article 5 of UNCAC stipulates that:

*“Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.”*

This article reflects the conviction of the States Parties that anti-corruption measures should be embedded in coordinated policies instead of being carried out in isolation or an ad hoc manner. It also recognises that anti-corruption approaches cannot be confined only to technocratic solutions aimed at fixing certain systemic problems. Rather, it places emphasis on the realm of public policy and thus acknowledges the inherently political nature of anti-corruption work. Article 5 puts emphasis on a strategic approach which becomes more evident when it is read together with the articles that follow.

In addition, Article 5 reinforces the spirit of the Convention in preventing and combating corruption not as an end in itself but to promote integrity and accountability as well as the proper management of public affairs. These are key ingredients for good governance and as such crucial preconditions for sustainable development (see Figure I).<sup>5</sup> Hence, national anti-corruption policy frameworks<sup>6</sup> face the challenge not only of building bridges between the realms of corruption prevention and enforcement but also of linking them adequately to other policies and reforms aimed at building the basis for sustainable development.

National anti-corruption policies can take many different forms, such as explicit anti-corruption policies (which have often found their expression in anti-corruption strategies or similar policy documents), cross-cutting transparency/public integrity policies or an amalgamation of public sector reforms which tend to be considered as implicit anti-corruption agendas in themselves (see section 1.2).<sup>7</sup> Clear demarcation lines between these options, which are not mutually exclusive, are difficult to establish and in practice it is common to find a combination of such policies.

**With a view to providing inputs for States Parties and development partners for the implementation of Article 5, this study analyses the experience of six countries (Georgia, Indonesia, Nicaragua, Pakistan, Tanzania and Zambia) with the design and implementation**

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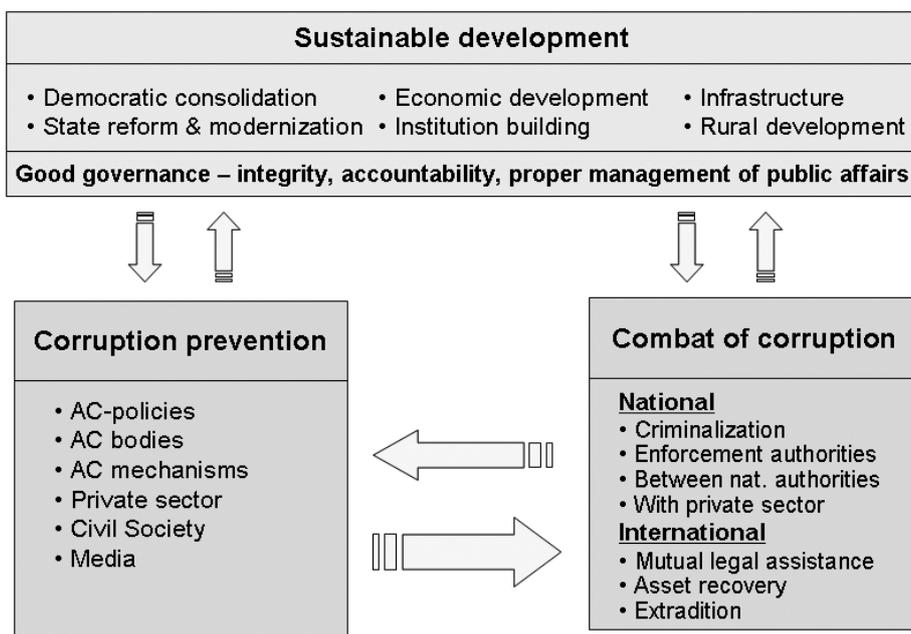
<sup>5</sup> The United Nations Millennium Declaration of 2000 states that one of its primary objectives is to “create an environment - at the national and global levels alike - which is conducive to [sustainable] development and to the elimination of poverty” and further says that “success in meeting these objectives depends on good governance within each country ... and at the international level ...”. General Assembly resolution 55/2 of 8 September 2000.

<sup>6</sup> With the term “anti-corruption policy framework” we refer to a set of anti-corruption policies that have emerged in a specific country context and that can be seen as following a broader national level logic or nationality steered anti-corruption approach.

<sup>7</sup> These public sector core reforms – often referred to by development partners as good governance reforms without going into detail about what “governance” means in the particular context – frequently cover the areas of public expenditure management and financial accountability, the civil service, the justice sector and decentralisation.

of one of these options, namely explicit national anti-corruption policies or strategies.<sup>8</sup> It explores how these anti-corruption policy frameworks were developed and identifies catalysts and driving forces as well as criteria that were used to prioritise reforms. The study further explores how the policies were implemented and what role development partners (DP)<sup>9</sup> played in the overall process. Special attention is given to finding out more about what these country experiences can tell us about the presumptions for effective anti-corruption policy making, such as ownership, stakeholder participation, knowledge-based design, a holistic approach, priority setting and sequencing, coordination and monitoring, as well as about potential tensions between some of these features.<sup>10</sup> The methodological approach is summarised in the Annex.

Figure 1 – Interdependence between prevention and combating of corruption for sustainable development



Source: Adapted from U4 background paper “International Cooperation Workshop on Technical Assistance for the Implementation of UNCAC”, Montevideo (May 2007).

This focus has been chosen because i) to date it has often been pursued; ii) there is a critical lack of empirical knowledge about how these policies were developed and implemented; iii) development partners – including the U4 agencies – have been actively engaged in developing the type of anti-corruption and governance reforms discussed in this study; and iv) it is likely that such broad anti-

<sup>8</sup> In national-level anti-corruption initiatives around the world, there has not been consistency in the use of terms for explicit national anti-corruption approaches. Although the need for clarification is acknowledged, for the purpose of this study we will look at anti-corruption policies and strategies as national anti-corruption policy frameworks. The purpose is to study the dynamics of policy making, not to determine if a policy is a policy or strategy or vice versa. Hence, the term “explicit anti-corruption policy or strategy” refers to a publicly declared “anti-corruption strategy”, “anti-corruption (action) plan”, “national integrity strategy/plan” or “anti-corruption policy” that is drafted and steered by a national government.

<sup>9</sup> The term “development partners” refers to all bi- and multilateral agencies that provide development aid and technical assistance to partner countries.

<sup>10</sup> These features of good policy making in general were taken up in recommendations for effective anti-corruption policy making issued by international organisations such as the World Bank, UNODC and UNDP.

corruption policies or strategies will be pursued with greater enthusiasm as States Parties seek to fulfil their obligations under Article 5 of UNCAC.

The study examines in depth anti-corruption policies and strategies targeted on preventing corruption, as well as their links with public sector and governance reforms, while combating corruption is touched upon as an integral part of national anti-corruption policy frameworks and often as a precursor for prevention in the countries studied. Although Article 5 of UNCAC is part of Chapter II on preventive measures, effective and coordinated policies are needed to implement both preventive and punitive anti-corruption measures as well as to establish the vital links between these mutually reinforcing fields of anti-corruption work.<sup>11</sup> As such, Article 5 is a gateway for the implementation of overall UNCAC provisions.

## 1.1 What are anti-corruption policies?

The meaning of *public policy* depends on the context of its use.<sup>12</sup> An often quoted and useful approach considers public policies as processes, highlighting the historical dimension of policies and pointing to different phases during the process, e.g. policy making, policy implementation and policy evaluation (Turner and Hulme, 1997). Policies are created by a variety of actors with multiple, often conflicting and at times changing political objectives. One of the most important features is that public policy making is not a highly rational process with static goals in which expert technocrats have the control to achieve predicted or stated outcomes. Rather, policy making is often a “fuzzy betting attempting to influence the probability to future situations” (Turner and Hulme, 1997).

Anti-corruption policies cut across different sectors of a country’s governance system and its multiple institutions, and can complement, strengthen or compete with each other. Their dynamics and strengths depend on the broader governance context, changing political agendas and the capacities, will and power of the players involved.<sup>13</sup> A good illustration of this can be found in the anti-corruption policies of Chile over the past 10 years, as reflected in Figure II.

It is important to note that the provisions of UNCAC are often pursued through a series of cross-cutting policies (e.g. legislative, state modernisation, government auditing and probity policy, see Figure II) under the auspices of different ministries, departments and other public agencies. During the political cycle of a government these policies move up and down in importance on the political agenda depending on the priorities of the moment, the leadership of the responsible institution and factors of the political environment. The experience of Chile also shows that institutionalising the different anti-corruption policies has allowed all of them to survive at least to some extent, even in changing political settings. Continuity must be ensured if these policies are to have an effect.

It is noteworthy that in the US and Europe the battles and negotiations of political interest groups are concentrated on the policy making and design stages while implementation follows through the

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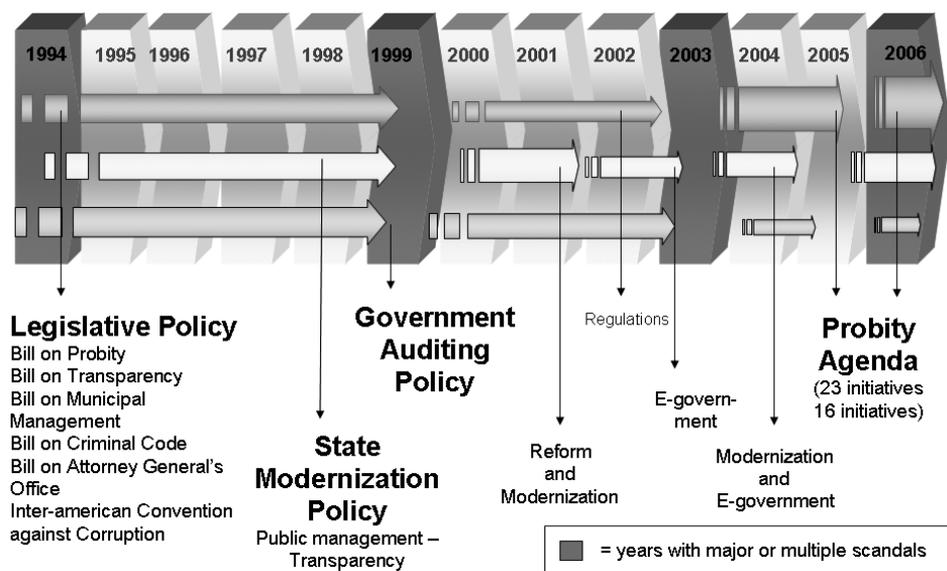
<sup>11</sup> See U4 background paper “International Cooperation Workshop on Technical Assistance for the Implementation of UNCAC”, Montevideo (May 2007).

<sup>12</sup> Birkland (2001) outlines common elements of the different definitions of *public policy*: policies are i) made in the name of the public, ii) made or initiated by government, iii) interpreted and implemented by public and private actors, iv) what the government intends to do, and v) what it chooses not to do.

<sup>13</sup> “Few political leaders have been able to bind themselves to anti-corruption reforms over an extended period of time.” (Heilbrunn, 2002). Also, cyclical anti-corruption policies often negatively affect continuity (Doig et al., 2005).

institutional systems.<sup>14</sup> In developing countries, however, where decision making processes are often more closed and “interest aggregating structures are weak”, political interest groups tend to focus their influence on the implementation phase, where “those with particular interests are best able to participate” (Thomas and Grindle, 1990).<sup>15</sup> The empirical part of the study confirms this and points to the need for more attention to be given to policy implementation, where policies and legal or administrative measures often become distorted.

Figure II – 13 years of different anti-corruption policies in Chile



Source: Miguel Peñailillo (2007) – International Conference on Anti-corruption in Latin America.

Contrary to a common belief, policy making does not follow a linear model where implementation is conceived as simply putting government documents into practice and where failures are mostly attributed to a lack of political will, resources or understanding of the nature of the problem. Conversely, policy processes are dynamic interactions with multiple feedback loops permeated by politics and power issues that influence or even dominate technocratic approaches. This is particularly true for anti-corruption policies, which affect the distribution of or access to political power and reduce opportunities to accumulate (illicit) economic wealth and thus restrict power.<sup>16</sup> Hence, interactions between reformers and opponents create unforeseen consequences for the policy objectives and require adjustments and corrective measures throughout the implementation process, as can be seen in Figure III.

As indicated above, to date considerable efforts have been made to develop practical advice on what an anti-corruption policy document or strategy should consist of and how it should be developed.

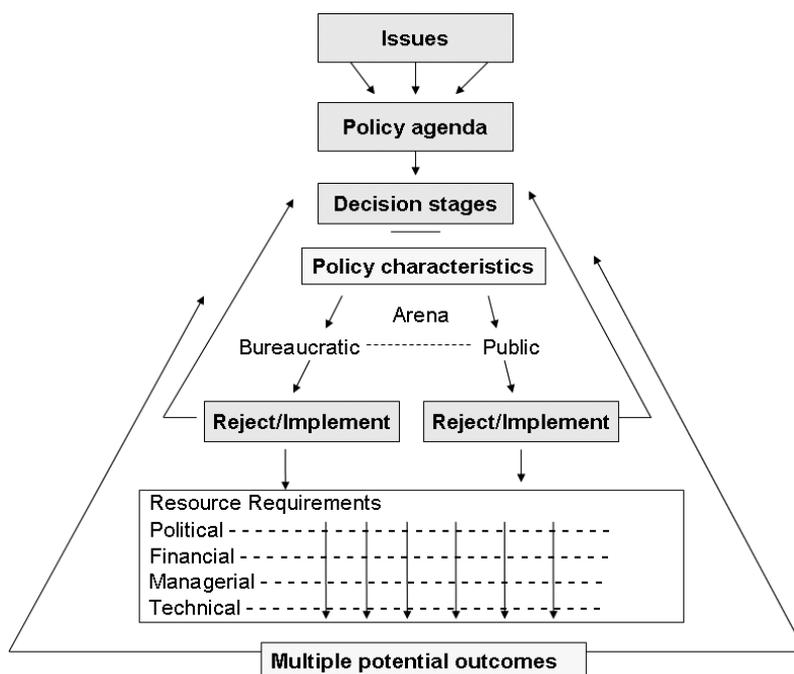
<sup>14</sup> Lahera (2002) offers a useful approach to distinguishing between different phases of policy making: i) genesis – or bringing an issue onto the political agenda, ii) design – decision making about what will be done and what not, iii) implementation, and iv) monitoring and evaluation.

<sup>15</sup> “At this stage a large portion of individual or collective demand making, the representation of interests, and the emergence and resolution of conflict occur. Also, politics based on factions, patron-client ties and other affective forms is highly suited to individualised demand on the bureaucracy for the allocation of resources” (Thomas and Grindle, 1990).

<sup>16</sup> The relationship between corruption and power is well captured in the following phrase: “Corruption is about governance and governance is about the exercise of state power ...” (Schah and Schachter, 2004).

However, these recommendations have been largely prescriptive and some of the underlying assumptions have more recently been questioned.<sup>17</sup> Also, the lack of sound, reliable diagnostics, contingent on the political, institutional, cultural and economical character of each country, has been an important impediment to developing public policies that combine the best of “politics” with the best of “technocratic approaches”. And the essential phase of implementing anti-corruption policies has received relatively little attention from governments and development partners alike, although this is the phase in which political and economic actors in countries with weak institutions play their cards to achieve personal or group interests.

Figure III - The interactive model of policy implementation



Source: Thomas, J. W. and Grindle, M.S. (1990) “After the decision: Implementing policy reforms in developing countries”, *World Development*, vol. 18 (8).

Finally, inherent tensions between some of the recommendations for effective anti-corruption policy making simmer under the surface without being acknowledged. Thus, the quest for a holistic and broad-based approach can create difficulties for the setting of priorities and sequencing. National ownership can be “kidnapped” by national elites, who may steer anti-corruption approaches towards areas that are not too damaging or sensitive for the powers in place. National initiatives may also just be the result of international pressure behind the scenes, while real ownership is lacking. As will be shown in the empirical part of the study, the politics of anti-corruption policy making have

<sup>17</sup> For example, Michael (2004) warns that recommendations such as integrated and holistic strategies are based on assumptions that have not been proven to work in practice. Haarhuis and Leeuw (2004) state that “none of the identified top-down anti-corruption premises is clearly supported by cross-country empirical evidence”. Shah and Schachter (2004) point out that support for anti-corruption agencies or awareness raising campaigns will have limited effects in a context with rampant corruption. Rather, efforts should focus on broad underlying features of the governance environment. The focus on awareness raising has been criticised as it mainly helps to create an atmosphere of public cynicism. And the creation of broad coalitions has been questioned due to their limited success in sustainability (Tisné and Smilov, 2004).

been largely neglected, although an understanding of the political context and policy dynamics is crucial for quality policies (Turner and Hulme, 1997).

## 1.2 What types of anti-corruption policy framework can be identified?

Since the mid-1990s, countless initiatives against corruption have emerged at the country and international levels. This has been largely due to the fact that the international community recognised the devastating effects of corruption on sustainable development, on political stability and, since 2001, on global security. But these anti-corruption initiatives were also fostered by the public outcry in many countries about the impact of corruption on their lives as well as by the growing number of so-called anti-corruption governments.<sup>18</sup>

Experience has shown that every country in the world faces the challenges and risks associated with the phenomenon of corruption. However, the ways in which corruption creeps into and reproduces itself in a given society vary widely and depend on a set of historical, political, economic, social and cultural factors. For similar reasons, the ways in which governments choose to deal with corruption also vary widely. Nevertheless, from a macro-level perspective, a series of distinct approaches with common features can be identified.

In the following sub-sections an attempt is made to identify the main types of anti-corruption policy framework found in practice.<sup>19</sup> Rather than providing an exhaustive classification of different initiatives, the study seeks to illustrate different ways in which the implementation of Article 5 may be pursued as a gateway to the provisions of UNCAC. It should be noted that clear lines between the different approaches are often difficult to establish.

### 1.2.1 Explicit anti-corruption policy documents

A number of developing and transitional countries – including those covered by the case studies here – have crafted extensive anti-corruption policy documents<sup>20</sup> (often called anti-corruption strategies). Those often contain a large number of legal and administrative measures, sometimes even several hundreds.<sup>21</sup> The design of these documents is sometimes preceded by country-specific diagnostic work, such as corruption or integrity baseline studies, an analysis of the country's integrity system, or an examination of the national institutional arrangements for fighting corruption, among others.<sup>22</sup> But it can also be the result of a deliberate gathering of a broad range of

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<sup>18</sup> Since the late 1990s, in many countries new governments have been swept to power on broad anti-corruption platforms containing promises to introduce zero tolerance policies. However, to put the promises of the election campaigns into practice has proven to be difficult in many of these countries.

<sup>19</sup> Anti-corruption policy frameworks are referred to by many different terms. For the purpose of this study national governmental initiatives will be taken into consideration if their stated objective is to reduce / control / prevent corruption with the aim of improving the proper management of public resources as required by Article 5 of UNCAC.

<sup>20</sup> The terms used for explicit anti-corruption policy documents also vary widely and include “anti-corruption policy”, “anti-corruption strategy”, “action plan” and “national integrity plan”. We will put these documents under the umbrella term of “anti-corruption policy documents”, as they define the government's goals and objectives in the fight against corruption, are part of the national political agendas and indicate what the governments intend to pursue.

<sup>21</sup> Pakistan's National Anti-Corruption Strategy (2002), for example, features almost 400 different measures, and Albania's Anti-Corruption Plan (2000) envisaged more than 130 measures in five broad areas.

<sup>22</sup> For example, the World Bank has developed a three-pronged survey of public officials, the private sector and civil society, UNDP and others have been engaged in integrity or baseline studies, and Transparency International has conducted numerous studies of national integrity systems.

interests and initiatives, at times dominated by development partners, which are then anchored in a national plan.<sup>23</sup>

Responsibilities for the implementation of these broad documents are distributed in different ways, but always involve multiple agencies. Often all ministries are required to develop and implement their own action plans. Coordination and monitoring is crucial and in many countries specific anti-corruption agencies are tasked with both, as is the case in Pakistan and Zambia. However, the political weight and hierarchical rank of such an agency is often low and sometimes at best similar to other ministries, thus impeding their exertion of authority over powerful public agencies, which usually have to implement the lion's share of anti-corruption strategies in their day-to-day work.

In other cases, the implementation and monitoring of the plans is assigned to a multi-agency coordination mechanism, which may have the form of a national integrity, transparency or anti-corruption council or committee. Membership of these committees and councils may be high level but continuous, long-term coordination and monitoring tend to be challenging, if not impossible (UNDP, 2005). A third option is to assign overall responsibility for such strategies to a ministry charged with reform coordination, as in Georgia.

Explicit and usually extensive anti-corruption policy documents are frequently found in countries with perceived widespread corruption.<sup>24</sup> The official rationale for this approach seems to be that to break through the vicious circle of mutually reinforcing forms of corruption all-encompassing solutions are required (Tisné and Smilov, 2004). The unofficial rationale may be that governments and development partners need to show different constituencies that corruption is being addressed (see sections 2 and 3). However, this does not seem to be an appropriate or feasible approach for countries with weak state capacities (see individual case studies for this report).

### 1.2.2 Legislative agendas for transparency or anti-corruption

Another form of anti-corruption policy framework can be found under the umbrella of legislative agendas for transparency, probity, integrity or anti-corruption. In this case, countries strengthen the legal basis of their institutions to prevent corruption, but also improve or broaden their criminal codes in order to be able to prosecute different types of corrupt practice. However, the apparent reasons and political dynamics for such legislative approaches can vary widely. In the following, three different ways are briefly illustrated:

#### i) *Remedy of specific weaknesses of institutions or governance systems*

Specific vulnerabilities to corrupt practices are often evidenced through scandals, political competition or advocacy efforts by non-state actors.<sup>25</sup> In response to the identification of systemic institutional weaknesses, existing laws are either amended or new legislation is developed. Often,

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<sup>23</sup> The experience of the Ghana Anti-Corruption Coalition (GACC) in developing an Action Plan (2001) is an example of this. The Action Plan that was finally adopted by the GACC and donors, and contained what development partners were pursuing and what the Coalition thought ought to be done. However, the Plan was not based on a diagnosis as the results of an anti-corruption survey were not yet available (Asamoah, 2003).

<sup>24</sup> In South-East Europe, a specific modality of comprehensive anti-corruption strategies has been dubbed "anti-corruption Omnibus Programmes" by the EBRD. They tend to share some or all of the following components: an anti-corruption law; a national anti-corruption strategy or programme; a ministerial commission, specialised unit or dedicated agency; an action plan to implement the programme; and a monitoring mechanism (Smilov, 2006).

<sup>25</sup> Examples in many countries include the areas of political party and campaign financing, lobby activities, civil service appointments, public procurement and the lack of transparency and access to information, among others.

such processes take time, above all when political consensus is lacking about what needs to be done and how. Particular difficulties arise with respect to contentious issues such as political party and campaign financing or lobbying regulations.

This form of anti-corruption approach can be found specifically in countries with relatively well functioning institutions and a fair level of governance. Initiatives for reform emerge largely from national actors, governmental and non-governmental alike, who may well use international frameworks as a reference point to exert pressure on opponents. These initiatives are usually carried out through already existing institutions. A good example is Chile's Probity and Transparency Agenda of 2006, which was launched by the President in response to a series of scandals. It addresses a number of long-known underlying causes for corrupt practices and was embedded in the framework of UNCAC.<sup>26</sup>

ii) *Legal obligations for accession to the European Union*

Accession to European Union (EU) membership has not only been made dependent on legislative changes in the realms of the rule of law, respect for human rights, and broader democratic governance, but to a significant extent also on compliance with anti-corruption measures. Incentives for EU membership are powerful and candidate states have been relatively quick to carry out a series of legislative anti-corruption measures. For example, by the end of 2002 eight out of ten candidate countries had ratified the Council of Europe's (CoE) Criminal Convention against Corruption compared with only three out of the fifteen member countries (OSI, 2002). EU accession states, such as Estonia, Slovenia and Poland, were also the most likely among twenty-four transition countries to review and amend key legislation for corruption prevention, such as their laws on the civil service, financial disclosure, public procurement, freedom of information, party financing and money laundering (Stevens and Rousso, 2003).<sup>27</sup>

This approach is largely motivated by external factors, notably the political pressure of the EU Commission. On the other hand, candidate countries have high expectations about the benefits to be derived from EU membership. Hence there is an important endogenous momentum, too. However, in the absence of strong national constituencies and considering that the governments of EU accession countries may be held accountable by the Commission rather than by their own population, it remains to be seen to what extent this approach will bring about real change.

iii) *Anti-corruption laws as a precursor for broader reform*

Some developing countries have concentrated their anti-corruption efforts in a first phase on the development of an often comprehensive anti-corruption law. These laws tend to encompass the definition of different types of corrupt practice, the regulation of some preventive measures and the investigation of corrupt practices as well as, sometimes, the creation of a special public agency responsible for the implementation of the law. The efforts are in some cases accompanied by the development of implementation plans for the laws, including institutional development plans for the anti-corruption agencies themselves and/or other integrity institutions. Examples of this approach

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<sup>26</sup> See "Agenda de Probidad y transparencia del Gobierno de Chile" (November 2006) [www.gobiernodechile.cl/agenda\\_transparencia/medidas.htm](http://www.gobiernodechile.cl/agenda_transparencia/medidas.htm)

<sup>27</sup> South-Eastern European countries, such as Romania, Bulgaria, Serbia and Montenegro, have been most active in undertaking Omnibus Programmes. This can be partly explained by the higher levels of corruption in these countries but also by pressures from the Stability Pact and others to make visible anti-corruption efforts (Stevens and Rousso, 2003).

can be found in some countries in Asia, such as Cambodia,<sup>28</sup> Laos,<sup>29</sup> Mongolia and, in a less sophisticated way, Afghanistan.

Although this approach could be considered an “ice-breaker” in some environments where corruption used to be a “taboo” issue in public debate, as was the case in Laos, considerable challenges remain to be addressed in the following phase. These challenges include the need to link anti-corruption efforts to broader governance reforms, in particular in the area of public sector management, the regulation of economic activities, but also the accountability of public officials and the regulation of interest groups (UNDP, 2006).

### 1.2.3 Targeted approach focusing on key areas for anti-corruption reform

A number of countries have focused anti-corruption policies on specific areas for action. A common element of these targeted policies seems to be the belief that concerted and determined action in a specific field can lead to change in others.

One form of targeted preventive anti-corruption policy is found in the “*Public Integrity Approach*” (OSI, 2002). Efforts are concentrated on strengthening the sense of public responsibility and accountability and on creating a public culture of shared values and ethical standards. The assumption is that public officials should have positive incentives to behave with integrity. It is believed that corruption is best controlled if public officials can act with varying degrees of autonomy in the interest of the public good as long as a strong culture of public ethics and integrity makes them more or less immune to opportunities for wrong-doing. Examples with elements of this approach can be found in the Polish civil service (OSI, 2002), the Presidential Anti-Corruption Programme of Colombia (1999-2002), and in Puerto Rico.

More recently, some countries have started to pursue sectoral anti-corruption approaches, sometimes substituting and sometimes complementing broader anti-corruption strategies. Sectoral approaches focus either on government agencies that are considered highly vulnerable to corruption (such as tax and customs departments), or on sectors that are crucial for the achievement of the Millennium Development Goals, such as the health and education sectors. Examples are the Mongolian health sector as well as the Afghan revenue department.

Another targeted, albeit initially punitive, anti-corruption approach can be found in countries that started with a determined crackdown on corrupt practices. Newly created, highly specialised, independent and well-resourced anti-corruption agencies focused on the investigation and prosecution of corrupt individuals. Recognising that a sanctions-based approach was not enough, these countries quickly introduced elements of the above-mentioned public integrity approach. Examples are Hong Kong, Singapore and New South Wales. Due to their success, there have been many efforts to export them to countries of the developing world with widespread corruption, often supported or advocated by the international community. However, results there have been at best mixed (Heilbrunn, 2002; Meagher, 2005; Doig, 2005) largely due to the fact that the model is not easily exportable to any given country context. Hence, caution is needed when selecting such an

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<sup>28</sup> In Cambodia, an implementation strategy for the Anti-Corruption Law was discussed even before the law was approved. This approach was supported by development partners, which hoped that it would speed up the approval process.

<sup>29</sup> It should be noted that in Laos the current legal and institutional anti-corruption provisions are the result of prior efforts to fight corruption. Hence the Anti-Corruption Law of 2005 is based on a prior anti-corruption decree from 1999, and the recently created Counter Corruption Agency (2006) is the result of merging the prior State Inspection Authority with the Party Central Control Committee. Prior efforts suffered from significant difficulties in generating effects and the new institutional arrangements are expected to help bring about change.

approach, which seems to be more adequate for countries with relatively good levels of governance (World Bank, 2000; Michael, 2004).

#### 1.2.4 Embedded anti-corruption approach through public sector reform

Some countries do not have major explicit anti-corruption policies or programmes. Under certain circumstances, in particular when corruption at all levels is pervasive and state capacities are weak, a good way to address different manifestations of corrupt practices can be an implicit or embedded approach through reforms of the core areas of public sector management systems (World Bank, 2000), which are often also called (good) governance reforms. These generally encompass the areas of public financial management, civil service reform, judicial reform, decentralisation, administrative procedures and public procurement, as well as internal and external audit systems. The main objectives of these reforms are not to curb corruption per se but rather to increase the effectiveness, efficiency, transparency and accountability of the administrative, financial and control systems. The expected control of corruption is seen as a valuable by-product, although this hypothesis has not been proved so far.

This approach is also often found in conflict or post-conflict countries where a direct focus on corruption tends to be politically sensitive.<sup>30</sup> It is mainly supported by development partners for the reasons given before. But at the same time governments may create anti-corruption agencies with broad mandates (investigation, anti-corruption education, prevention) and then do little to provide them with the necessary political and technical support. Such window-dressing, though, does not fool the public and the international agencies for long. Hence, two different approaches may co-exist and also conflict with each other, examples of which can be found in the Democratic Republic of Congo and Afghanistan.

The main challenges of this approach lie in ensuring i) that core governance reforms include a strategic anti-corruption dimension in order to address the main risks of corruption for the success of these reforms (including intervening in vested interests),<sup>31</sup> ii) that the existence of often politicised anti-corruption agencies does not consume scarce resources unproductively or create public cynicism vis-à-vis anti-corruption work, and iii) that there is a shared strategic vision between the multiple actors (in particular within development partners) so as to avoid isolated piecemeal initiatives and duplication.

#### 1.2.5 Selected fixes and implicit anti-corruption policies

The non-existence of explicit anti-corruption policies is a common feature of developed countries, but for different reasons. The majority of developed countries have strengthened their institutions to prevent and control corruption during the country's political and development process over decades or in fact centuries.<sup>32</sup> The levels of accountability, transparency and public integrity that characterise the institutions of most of these countries today are a result of long-term public policies. Considering that the three principles of accountability, transparency and integrity are

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<sup>30</sup> What to do about corruption in conflict and post-conflict countries has been a contentious issue for fear of the risks of destabilising them and/or reinvigorating violent conflict (UNDP, 2006; TIRI, 2007).

<sup>31</sup> For example, the permanent justice institutions of Afghanistan have developed in 2005 a 10-year strategy "*Justice for All*" in order to overhaul the whole sector profoundly. The justice sector in Afghanistan is perceived to be the most corrupt sector in the country (Integrity Watch, 2007), with corrupt practices being omnipresent in the police, the court system, the Attorney General's Office and the Ministry of Justice. Despite these severe and well-known problems the *Justice for All Strategy* does not propose measures on how to address vulnerabilities to corruption and only includes activities to train judicial professionals in ethics.

<sup>32</sup> See Dwivedi and Jabbara (2001), "Where corruption lives", for brief overviews of the development of corruption and government responses from the US, Canada and France, for example.

generally handled as antidotes to corrupt practices, one could dare to say that most developed countries have implicit anti-corruption policies.

Nevertheless, in many countries certain areas have either not been “sealed” yet against corrupt practices or have become more vulnerable over time, e.g. in the financing of politics, the regulation of “revolving doors” between the public and private sectors,<sup>33</sup> and in public procurement. The debacle of the Enron case in the US is a good example, with the underlying institutional weakness being mended by the creation of a Public Company Accounting Oversight Committee.

In most of these countries, demand for reform tends to come from the public as a reaction to major scandals, from non-state actors through sustained advocacy work, or from the political establishment itself. Further, demand for selected reform also originates from international anti-corruption initiatives, such as obligations derived from the OECD Anti-Bribery Convention or more recently UNCAC.

### 1.3 Anti-corruption policy documents and UNCAC implementation

The “typologies” described above are by no means exhaustive and interpretations drawn from them must be treated with care. Which specific anti-corruption policy frameworks are chosen or emerge depends on the political context of each country, its history, institutional environment, and the relative strength and power of different political actors, but also contextual factors and purely coincidental circumstances. Therefore the development of anti-corruption policies needs to be based on a good understanding of the local context and political dynamics.

UNCAC offers a comprehensive reference framework for anti-corruption work and it provides new opportunities to orient policies and anti-corruption measures at national levels. However, it also poses considerable new challenges. The temptation to undertake too many anti-corruption measures at the same time may be reinforced, and the drive to amend or pass ever new laws in line with high international standards might draw attention away from effective implementation of what is already in place (even if it does not live up to the highest standards). In short, implementation of UNCAC could become an end in itself instead of serving as a vehicle for strengthening governance systems, accountability and public integrity.

Against this background and in view of the anticipated demand for policy advice, from both national governments and international development partners, on how to implement Article 5 of UNCAC as a gateway for implementing UNCAC as a whole, this study looks at explicit national anti-corruption policies and strategies to gather insights from nearly a decade of experience in six countries. It is neither the purpose nor the scope of this study to come to any conclusive findings. This would not be possible based on six case studies, nor desirable as there are no “one size fits all” approaches. Also, it should be borne in mind that although for this study we have grouped the political players into “government”, “development partners” and “civil society” in order to simplify the analysis, we want to remind the reader that these groups do not in reality act as monolithic blocks. In summary, the aim of this study is to contribute to a relatively unresearched field and to nurture discussions on the implementation of UNCAC.

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<sup>33</sup> “Revolving door” refers to the interface between the public and private sectors with regard to public decision-makers transferring to private sector positions in fields close to where their public decision making power lay. The revolving door also refers to situations that work the other way round.

## 2 How do anti-corruption policy frameworks evolve?

The empirical work of this study is based on country case studies from **Georgia, Indonesia, Nicaragua, Pakistan, Tanzania and Zambia**.<sup>34</sup> In order to guide the difficulties in selecting the six countries the following criteria were used: i) the existence of an explicit national anti-corruption policy or strategy, and ii) support of these efforts by international development partners.<sup>35</sup>

The case studies were elaborated on the basis of qualitative interviews with a broad range of key interviewees in each country and a literature review, including key policy and reform documents as well as political analysis.<sup>36</sup> The teams, comprising a national and an international researcher, followed the methodological approach attached in Annex I. Given that this is an independent research project, the case studies were not shared with or sanctioned by the respective governments, although the case study authors drew largely on information provided by governmental actors. Rather, each case study underwent a national “peer review” process to ensure factual correctness and overall quality.

### 2.1 Brief background and commonalities of the countries studied

In all the countries, new political and economic systems have emerged over the past 15 years, albeit with significant differences in both of these areas. The transitions to free market economies have generally been in the forefront of reforms with a considerable consolidation of macroeconomic stability. On the other hand, political transitions to multiparty democracy started but are still incomplete with structural weaknesses in the area of political governance. The concentration of power in the executive (except in the cases of Indonesia and Nicaragua, where minority governments had to forge difficult coalitions) usually hinders mutual control between the three state powers. Naturally, the executives invest a fair amount of effort in avoiding change and the old political and economic elites continue to cast their shadows over reform efforts.

#### Core government policies and reforms

All countries studied have been undergoing intensive restructuring, modernisation and/or public sector reform programmes over the past 15 to 20 years with a specific focus on reducing widespread poverty. These core reforms usually aim at making the public service more effective, efficient and accountable and are as such frequently believed to constitute an anti-corruption agenda per se. Most countries have focused their reform efforts on public expenditure management and financial accountability, civil service reform and downsizing of the state, justice sector reform and decentralisation. In aid-dependent countries such as Nicaragua, Tanzania and Zambia, the reforms are perceived by national interviewees as responding to demands from international agencies rather than being home-grown, while in Georgia and Indonesia they seem to coincide with nationally driven reform agendas.

It is noteworthy that these core reforms are centred on technocratic reforms aimed at strengthening state institutions. However, they do not significantly affect the balance of power. The “bigger” issues of a more political nature, such as electoral reform and institutional reform to guarantee the independence of oversight organisations, sound party financing, access to information and

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<sup>34</sup> Fully developed case studies on each of these countries are available at [www.u4.no](http://www.u4.no)

<sup>35</sup> Post-conflict countries and countries already in the process of EU accession were excluded.

<sup>36</sup> Key interviewees were drawn from government and public agencies (such as the auditor general and attorney general offices, parliamentary committees, etc.), development partners, civil society organisations, the media and the private sector.

transparency, are either not part of the political agenda or systematically blocked. An apparent exception is Nicaragua, which formally gives high importance to transparency and civil society participation, but where in practice the government does not have enough political will to put declared commitments into practice.

### Scope of corruption

All countries studied suffer from perceived widespread corruption, which is evidenced in national and international surveys, qualitative research and indicators.<sup>37</sup> However, not all countries have suffered from corruption like a hereditary sin. Tanzania and Zambia enjoyed relatively clean state administrations early after independence. Corrupt practices crept in only during the 1980s and intensified during the economic liberalisation and laissez-faire governments of the 1990s, a process which may be difficult to reverse. The other four countries, however, have experienced rampant corruption for many decades, often used as a political tool to buy off opponents and cement the power of undemocratic regimes.

Usually the so-called petty, grand and political types of corruption co-exist and mutually feed off and protect each other.<sup>38</sup> It is noteworthy, though, that the face of corruption and its manifestations have changed over the years. Thus, countries like Georgia in particular, but also Tanzania and Zambia, have made some progress in the control of petty or administrative corruption, which has helped to affect perceptions positively. But some countries show worrisome trends towards higher-level corruption, as is the case in Tanzania with the consolidation of corruption networks in the forestry and wildlife sectors, and in Georgia's procurement and privatisation processes. In the case of Indonesia, a massive decentralisation (devolution) reform has also decentralised the opportunities for corruption. Finally, resource-rich countries in particular (like Indonesia, Tanzania and Zambia) are at the same time victims and participants in cross-border corruption affecting the forest, wildlife and other resource sectors.

### History of anti-corruption initiatives

Most countries under review, in particular those with a democratic past, have a long history of anti-corruption measures, which traditionally focused on *sanctions* for bribery and abuse of power in the public sector. Special police-like investigation units have been established since the 1970s, in particular in the Commonwealth countries Pakistan, Tanzania and Zambia, but often to no avail as they themselves quickly fell victim to corruption. With the growing international anti-corruption agenda and increasing public outrage over the looting of the state, the political response was to create or strengthen a wealth of investigative and oversight institutions with anti-corruption mandates. In practice, however, these were often marred by blurred lines of responsibility and a lack of sustained political support. Furthermore, in all countries studied legal frameworks were reviewed in many areas related to the core reforms mentioned above. But laws to promote transparency and accountability have frequently not been passed, have been distorted or are not enforced.<sup>39</sup>

Corruption *prevention* has not been as politically attractive and well-publicised as investigations and sanctions, and a punitive approach was privileged specifically in countries with a new political leadership. Hence, Georgia, Indonesia, Zambia, and Pakistan opted initially for a sanctions-oriented

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<sup>37</sup> For the national data sources please see the bibliographies of the individual case studies. The international surveys and indicators include the World Bank Governance Indicators, the Afro- and Latinobarometer and others.

<sup>38</sup> For working definitions see [www.u4.no/document/glossary.cfm](http://www.u4.no/document/glossary.cfm)

<sup>39</sup> For example in the areas of access to information, political party financing, and procurement.

approach, in most cases directed against political opponents. On the other hand, Tanzania and in a way Nicaragua, where governments had continuity in power, focused primarily on prevention, which was considered to be less threatening and easier to manage in order to look good.<sup>40</sup> An interesting shift towards prevention took place in Zambia and Georgia when both governments were and are preparing for presidential elections. It should be noted here that the years of experience with the implementation of preventive anti-corruption policies differ considerably in the countries studied.<sup>41</sup>

### Main players

A common feature of the countries studied is that their political life is dominated by a powerful executive, with the exception of Indonesia and until recently Nicaragua as indicated above. In parliament, the ruling parties have enjoyed comfortable majorities, a situation which is accompanied in some countries by large powers being constitutionally vested in the president. However, parliaments usually do not have much ownership of public policies, nor do they participate significantly in their development. On the other hand, the civil service in most countries is highly politicised with often overall weak capacities, which frequently impedes effective implementation of public policies. Otherwise the landscape of political actors is diverse and differs from country to country, although the situations of Tanzania and Nicaragua stand out negatively for the de facto one-party state in the former and the pact of two parties to share political power in all state institutions in the latter.<sup>42</sup>

One would expect that countries with independent media and a relatively vibrant civil society, such as Zambia, Indonesia and Georgia, would feature more dynamic policy processes. However, it is not clear whether dogs that bark have the capacity to bite and if they do, whether it hurts. Civil society and the media are mostly active in public education and advocacy on corruption, to a much lesser extent in policy monitoring, if at all, and hardly ever participate in the development phase of anti-corruption policy. On the other hand, in Georgia and Nicaragua the proximity of civil society organisations to the government in power has reduced their apparent capacity for constructive criticism. Altogether, public expectations of governments to deliver on anti-corruption promises have been very high.

Development partners in all countries under review strongly support and demand (good) governance reforms. But their role in anti-corruption initiatives varies, while patterns are difficult to detect (see section 2.5). However, there is no doubt that development partners have played a crucial role in giving anti-corruption policy documents an initial push or support.

## 2.2 Design of anti-corruption policy documents

Based on experience with public policy making in general, international institutions that support and promote the global anti-corruption agenda, such as the World Bank, UNDP and UNODC, have

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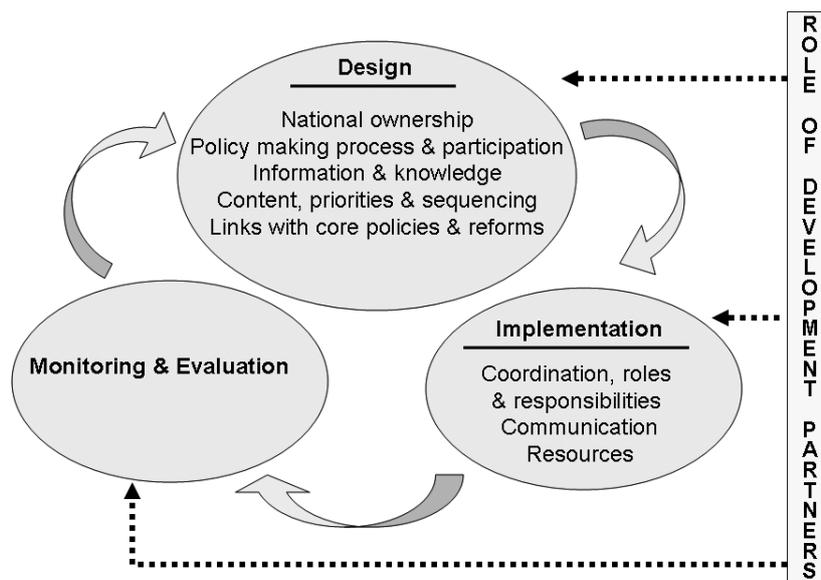
<sup>40</sup> It should be noted that Musharraf, in Pakistan, first established an anti-corruption agency to prosecute former political leaders. It was only two years later that the National Accountability Bureau developed a preventive anti-corruption strategy. Nicaragua focused on prevention, although President Bolaños converted the prosecution of former President Alemán into one of his flagship political goals.

<sup>41</sup> Tanzania has six years experience, Nicaragua and Pakistan four, Georgia and Indonesia two. Zambia has yet to start.

<sup>42</sup> In Nicaragua, the Executive is dominant today due to a power-sharing “Pact” recently agreed to by the majority parties FSLN and PLC, which basically erodes existing accountability mechanisms. The presidency of Bolaños, though, was characterised by his weak position due to a minority in parliament and little support from his own party base.

identified a series of key features for effective anti-corruption strategies and policies. The main features, such as ownership, stakeholder participation, knowledge-based design, a holistic approach, priority setting, sequencing, coordination, and monitoring, are used in this study as an analytical framework which is illustrated in Figure IV.<sup>43</sup> Given that anti-corruption policies cut across sectors, have multiple interactions and are interdependent with other core governmental policies and reforms, additional attention is given to these linkages. Further, special emphasis is put on the role of development partners throughout the policy cycle.

Figure IV – Analytical framework to understand anti-corruption policy making



It should be kept in mind that the anti-corruption policy cycle is not a linear undertaking but rather a dynamic process between the multiple players and different policy phases.

2.2.1 National ownership

One of the main features identified for effective anti-corruption policy making is “national ownership”, meaning that national actors, in particular the government but also other relevant players which have a stake in putting reforms into practice, drive, own and watch both the process and the content of anti-corruption policies.

*Contextual factors that catalyse national ownership*

Public discontent about soaring levels of corruption and media revelations about massive stealing of state resources by political leaders built national pressure in most of the countries studied. This spurred the need for a political response, specifically at election time. In addition, development partners exerted pressure on governments, openly or behind the scenes, to commit to good governance and to anti-corruption initiatives. Incentives - sanctions are generally not applied - include large amounts of development assistance to Nicaragua, Tanzania and Zambia.

<sup>43</sup> For an extensive list of these features see the methodological approach for the country case studies in Annex 1.

It is often argued that international anti-corruption treaties, be it the CoE Convention for Georgia, the OAS Convention for Nicaragua or the UN Convention for Indonesia and Tanzania, have also encouraged action. Nevertheless, apparent efforts towards compliance with such treaties should not be praised before the end of the day. While in Georgia compliance with GRECO recommendations may have brought about discipline in a largely ad hoc approach to anti-corruption, key areas for an accountable public service (such as parliamentary oversight and a merit-based bureaucracy) have been neglected. In Tanzania, the rush for compliance with UNCAC has raised concern among experts as international pressure for change is focused on formal compliance with an anti-corruption law, instead of looking at its quality or enforcement.<sup>44</sup>

### *Incentives for national ownership*

Some governments, such as Georgia, Indonesia and Zambia, upon coming to power opted for a multi-purpose zero tolerance stance towards corruption. The purposes pursued were to consolidate their own power base, to reassure the public that they were serious about addressing corruption, to show officially that nobody is beyond reach (although their own ranks and allies did usually remain beyond the reach of selective prosecutions) and to convince the world that stealing from state coffers would no longer be tolerated. Another important incentive has been the drive to recover large amounts of stolen assets for the benefit of the country.

On the other hand, the governments of Nicaragua and Tanzania, having a firm grip on power,<sup>45</sup> started with preventive anti-corruption strategies which mainly aimed at soothing the public and making development partners “happy”. Although prevention was officially chosen in acknowledgement of underlying governance failures, all countries from the outset lacked a strong political leadership and consensus to address these very failures.

Finally, Georgia, Indonesia and Zambia have more recently started to complement law enforcement with preventive approaches, largely in response to the pressure of international agencies. The resulting anti-corruption policies or strategies seem to be more realistic, as they either bring isolated ad hoc measures under one umbrella or reinforce and complement ongoing reforms, an approach that appears to be in line with the governments’ core priorities. However, implementation is in its infancy and the main challenge will be to steer these initiatives through the resistance of political and bureaucratic actors as well as powerful vested interests.

### 2.2.2 Policy making process and participation

Another key feature of effective anti-corruption policy making is to ensure the broad involvement of political and social actors in order to bring anti-corruption demand into line not only with appropriate responses but above all with state capacities. High expectations of the public need to be managed carefully, pursuing rather modest and feasible commitments instead of ushering in ambitious but empty promises.

Most of the countries studied followed a rather top-down policy making approach with widely varying degrees of participation and consultation. The policy documents were developed by

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<sup>44</sup> The Performance Assessment Framework (formal agreement between donor agencies and government) contained an indicator to submit a new anti-corruption law to parliament. International pressure upon non-compliance resulted in a sub-optimal law criticised for still not giving the national anti-corruption agency the necessary teeth for prosecutions.

<sup>45</sup> In Nicaragua, the party in government may change but the power-sharing “Pact” between the Sandinista Party (FSLN) and the Liberal Party (PLC) would make an alternation between these two ruling parties meaningless.

national teams consisting mostly of government officials, but also of consultants and academics. These teams were frequently supported in varying degrees by international experts, in particular to give advice on process and format for the initiatives. It is less clear to what extent international experts influenced the content and priorities and whether or not such guidance was helpful.<sup>46</sup>

With the exception of Zambia, the policy formulation processes were driven by mid-level government officials with little political leverage and with little participation of the very ministries supposed to implement large parts of the plans.<sup>47</sup> The latter were simply instructed to develop their own institutional action plans but with poor guidance or strategic direction for a coherent national undertaking. This lack of vision was often hidden behind the argument that each agency would know best what priorities to set. Although this is true, it does not excuse severe shortcomings in guiding the process in order to achieve coherence, feasible commitments and realistic solutions.

Equally problematic is that the processes were not championed by the political leadership despite efforts in Georgia, Indonesia, Nicaragua and Zambia to involve the president's office or a state ministry. High-level officials were mostly absent in identifying the major problems and developing adequate solutions for which they, in theory, would later be held accountable. In addition, the lack of political participation – be it by the cabinet or the parliament – further reinforced the lack of high-level ownership.

Finally, consultations for feedback took many different forms, from broad nationwide processes taking up to two years (Pakistan and Zambia) through limited opportunities for public agencies to provide inputs (Indonesia, Nicaragua and Tanzania) to little participation at all (Georgia). The participation of civil society organisations in the policy design phase was, with the exception of Zambia, weak to non-existent.

### 2.2.3 Information and knowledge

It has been widely argued that anti-corruption policies and strategies need to be developed from a sound base of knowledge about the scope, patterns and modalities of corrupt practices in a particular country. However, information, knowledge and understanding of corruption dynamics continue to be a great weakness for the formulation and prioritisation of anti-corruption initiatives after a decade of anti-corruption work in most of the countries under review.<sup>48</sup> This is in large part due to the lack of vision or interest of governments in conducting surveys or other analysis, but it is also partly due to the difficulties in generating the required knowledge (U4 Brief by M. Johnston, 2007). The resulting negative effect is several-fold and severe: prioritisation is done in an ad hoc, non-strategic manner, action plans are not focused, objectives are not necessarily in line with local expectations and demands, and it is not clear against what to monitor progress.

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<sup>46</sup> In Zambia, the terms of reference for the policy development consultancy pointed, for example, to the broad issues that should ideally be covered, including service delivery corruption but also state capture. But in most countries no guidance was given to ministries and public agencies on how to set real priorities and sequence activities in order to keep in line with capacities and resources. Above all, no emphasis was placed on pilot testing measures before a nation-wide roll-out, which has often resulted in not much being achieved.

<sup>47</sup> Although the process in Georgia was led by the State Ministry for Reform Coordination, which did have political leverage, there was only superficial participation by the relevant ministries.

<sup>48</sup> It should be noted that in some countries, such as Pakistan, Tanzania and Zambia, the existence and mandate of the national anti-corruption agencies was not the logical consequence of a national anti-corruption diagnosis and strategy but rather agencies that were already in existence at that time developed the policy approach.

Interestingly, most countries, with the exception of Zambia and Pakistan, did not base their policy documents on recent diagnostics of forms, manifestations and levels of different corrupt practices.<sup>49</sup> Furthermore, the poor understanding of risks of and vulnerabilities to corruption in specific sectors and institutions negatively impacts on ministerial and agency plans. On the other hand, in some cases well-known problems with high-level abuse by public officials are purposely not taken into account for political reasons.

Finally, anti-corruption initiatives are usually based on definitions of corrupt practices and ethical standards derived from international treaties. Mostly, they do not make an attempt to explore local values and principles of social organisation and how these coincide with or differ from the prescribed standards. This negligence impedes a focus on those corrupt practices most unacceptable to the public and finding solutions where values are in conflict.<sup>50</sup>

It is noteworthy that the earliest anti-corruption frameworks - those from Nicaragua, Pakistan and Tanzania - were explicitly guided by the World Bank Institute model of the late 1990s, which was based on the concept of a National Integrity System (NIS).<sup>51</sup> While this rather exogenous approach allowed for developing relatively holistic anti-corruption strategies, these have not been anchored in national political agreements.<sup>52</sup> Also, the NIS provides for a comprehensive analysis but is less successful in identifying sector-wide problems when setting priorities and sequencing.

#### 2.2.4 Content, priorities, and sequencing

According to the above-mentioned international recommendations, anti-corruption strategies should be both comprehensive and sequenced, a challenge in any context. Although the contents and priorities of anti-corruption frameworks differ in all countries studied, some common features can be identified. First of all in terms of *content*, the passing of new or amended legislation and the creation of new institutional structures are privileged over making them work (even if they are imperfect). This approach is reinforced by development partners through the benchmarks they advocate or exert diplomatic pressure for.

Further, aid-dependent countries, like Nicaragua, Tanzania and Zambia, focus their anti-corruption efforts on economic governance and civil service reform while core problems in the country's political governance and accountability structures go largely untouched. On the other hand, countries less dependent on aid, like Georgia and Indonesia, pursue a more self-defined approach

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<sup>49</sup> In Tanzania, the World Bank had suggested such a diagnostic in 2000 to the Mkapa Government but the offer was turned down and international agencies did not look for an alternative way to produce a survey.

<sup>50</sup> One of the most typical examples is certainly the way in which public positions are staffed. Under the principles of modern merit-based appointment systems, the human resource officer is expected to give the vacancy to the most competent candidate. However, in many developing countries the public official is expected by his/her family/clan/group to give the vacancy to a member of his/her social or political group. The profound rifts and dilemmas created by these conflicting values are generally not even mentioned as a risk to be taken into account. An interesting exception is found in Zambia where traditional chiefs participated in the policy formulation process and deliberated on a compromise on the gift-giving culture in order to maintain this social institution while at the same time putting a break on blatant abuse of it.

<sup>51</sup> See [www.transparency.org](http://www.transparency.org) for more information on National Integrity Systems (NIS). The NIS approach compares the institutions (organisations, key players, and rules and regulations) of a country against an ideal type of NIS.

<sup>52</sup> For example, the Nicaraguan approach of 1998 was mainly developed by the WBI for a President who had no intention of doing anything against corruption. In its efforts, the WBI built on the "successes" of their approach in East Africa, notably in Tanzania and Uganda. With hindsight, it becomes clear that simply exporting or replicating model approaches, which had not even been implemented at the time, does not work and should not be undertaken ingenuously.

where overall state reform and modernisation programmes are considered in principle as an anti-corruption agenda. Explicit anti-corruption frameworks were also elaborated only recently, either in response to international pressure (Georgia) or because the government realised that a unifying umbrella for isolated initiatives was needed (Indonesia).<sup>53</sup> These countries, too, have put few efforts into overcoming political governance problems related to corruption, such as favouritism in the public service and budget transparency.

In the majority of cases, anti-corruption policies pursue mainly the strengthening of public institutions, the review of laws and regulations and the simplification of procedures. This approach shows at least two significant weaknesses: first, it is usually not coupled with a government policy proactively to improve transparency; second, national anti-corruption policies in their focus on self-reform do not take sufficiently into account the role of non-state actors and parliament in overseeing progress. Also, despite the fact that most countries are somehow affected by cross-border corruption, this issue is usually not addressed explicitly in anti-corruption strategies (e.g. how to strengthen national public institutions and cooperate with those abroad to impede illegal logging, the trading of hunting licenses, etc).

In a number of countries, in particular the bigger ones and those where decentralisation processes have also decentralised corruption, it was highly debated whether or not local anti-corruption plans should be produced. While this issue escapes the scope of this study, experience in Tanzania and Indonesia suggest that great caution has to be applied in order not to add additional and unnecessary burdens of work for already stretched local administrators.

Considering that most of the studied anti-corruption policy documents are thematically very broad and meant to be implemented in all public agencies (in Tanzania, local authorities are also covered), it is difficult to speak of *prioritisation*. Nevertheless, the selection of broad areas for intervention seems to draw on other core government policies and reforms, such as the civil service, financial management, procurement, and justice sector reforms, among others. This has the advantage that anti-corruption efforts are meant to reinforce ongoing efforts (although there is a big gap from theory to practice) but has the disadvantage that some central problems of inadequate accountability are not addressed because they are not part of the political agenda of the government or because they are consistently blocked by the latter.

The feature of *sequencing* is virtually non-existent, which can be attributed to several reasons. First, the belief that an omnipresent problem requires the participation of all public agencies at once is still widespread and frequently seems to be nurtured by international agencies.<sup>54</sup> Second, this approach is a convenient political strategy for the government to dilute efforts, since change at all levels can easily result in no change at all. A noteworthy exception is Zambia, which started to implement parts of its anti-corruption policy in eight pilot ministries. However, this was not due to a strategic approach, but rather to a lack of funding. Third, there has been a lack of unambiguous strategic guidance from the political and technocratic leadership on what exactly is requested from implementing agencies and how they are expected to achieve these goals.

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<sup>53</sup> These countries bowed to some international demands, such as the GRECO recommendations in Georgia and the Financial Action Task Force requirements in Indonesia.

<sup>54</sup> The roll-out of anti-corruption action plans to all ministries from the start follows early international recommendations for comprehensiveness, but neglects sequencing in order to match goals with available capacities and resources. The non-existence of pilot tests for new ideas, such as the Integrity Committees in Tanzania and their “exportation” to Zambia, as well as insufficient technical support and monitoring, contributed to marring the efforts from the outset.

### 2.2.5 Linkages with other government policies and reforms

The national anti-corruption policies studied refer to links with governance and core reforms in the areas of financial management, the civil service, justice, decentralisation, security and the like. However, formal references on paper are not bound to bring about results in practice and an integration of anti-corruption efforts with priority policies and reforms is still far away. Horizontal connections are missing, a clear concept of coordination is non-existent and awareness of the benefits of synergies is lacking. Hence there are no spelt-out incentives, and the fact that action plans are left to each ministry without central high-level direction makes practical integration impossible.

In some countries, such as Georgia, Indonesia, and Tanzania, governments and development partners believe that (good) governance reforms will be more effective in eventually reducing corruption than anti-corruption strategies. Nonetheless, the question remains as to why the impact of those reforms on the reduction of corruption is not assessed regularly, e.g. as part of routine monitoring or through periodic surveys.<sup>55</sup> Also, it is not easily understandable why development partners in the case of Georgia would urge the government to call its *de facto* good governance strategy an anti-corruption strategy when the goals clearly go beyond corruption.

## 2.3 Implementation of anti-corruption strategies and policies

Putting anti-corruption measures into practice creates enormous difficulties not only because it challenges vested interests, but also because the often highly ambitious but badly planned undertakings do not come with adequate institutional arrangements for implementation, receive too few financial and human resources, and do not include tools for dealing with risks and resistance to change. This section concentrates on three proxies for effective implementation: coordination, communication and resources.

### 2.3.1 Coordination – roles and responsibilities

Roles and responsibilities are to some extent defined in all anti-corruption policies and strategies studied, although this exercise has taken place more on paper than in practice. Coordination is generally weak, irregular or non-existent and institutions tasked to perform this function often do not take a proactive approach. A closer look at implementation arrangements will help in understanding the reasons why.

Overall responsibility for coordination is usually assigned to the office of the president or to a state minister with the aim of providing the requisite political leverage. But this laudable approach is easily made ineffective by selecting units with little power or visibility, as has happened in Tanzania and Indonesia. Where anti-corruption agencies exist, these tend to be “twinned” with the president’s office to overcome the problem of their relatively subordinate rank and insufficient authority to deal with powerful line ministries and other public agencies.<sup>56</sup> Also, anti-corruption agencies in Pakistan, Tanzania and Zambia have incentives for good performance as they are trying to carve out for themselves new roles with public value. Nevertheless, with the exception of

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<sup>55</sup> Discussions on simple indicators for which information can be gathered easily do not seem to have taken place. Also certain “silo visions” of different fields, e.g. procurement, public administration reform, revenue collection, etc., have not yet been overcome and dialogue on how to monitor specific corruption-related issues in those fields is still missing.

<sup>56</sup> In Tanzania, coordination of the National Anti-Corruption Strategy and Plan (NACSAP) is lost in the Good Governance Coordination Unit, while in Zambia cooperation between the Anti-Corruption Commission (ACC) and the Cabinet Secretariat has been considered positive, although the potential role of the Good Governance Unit in the Ministry of Justice in policy implementation has not been entirely clarified yet.

Georgia the government agencies responsible for coordination and monitoring have little political power and all of them have limited capacities.

In most cases, anti-corruption lead agencies do not invest enough time and effort in explaining to ministries their particular roles and responsibilities in implementation. Instead, booklets are sent around while putting them into practice is left to self-initiation. More often than not owing to the lack of real buy-in or engagement with the anti-corruption policy, the ministerial or agency executives do not issue the required instructions on how their staff are supposed to implement the anti-corruption measures. Also, incentives for doing so or sanctions for not doing so are absent.

Managing the implementation of an anti-corruption strategy requires a keen understanding of where, when and how resistance to the plans might occur and how it can be overcome. Interestingly, most anti-corruption initiatives do not consider anything close to a risk management plan for dealing with changing political winds, mitigating the effects of opposition, or dealing with unforeseen obstacles. Nor does there seem to be awareness within anti-corruption lead agencies and other public institutions of the need for such measures, which reflects a lack of political will and to a lesser degree limited strategic management capacities.

### 2.3.2 Communication

It should be self-evident that cross-cutting reforms are particularly dependent on good communication between all implementing agencies and the public at large. Nevertheless, communication on anti-corruption strategies is weak in virtually all the countries studied. The documents are not easily available to those interested (public officials and citizens)<sup>57</sup> and most public agencies and politicians have little awareness even of their existence. Also, the fact that the goals and progress of the anti-corruption strategies are not proactively communicated to the public does not allow the creation of a sustained political debate and through it political pressure to move anti-corruption policies forward.

With recent developments in communication and information technologies, the fact that anti-corruption policies and the commitments assumed by governments therein are not widely disseminated must raise the question whether this is attributable to a lack of capacity or an intentional lack of will. On the other hand, it is equally not easy to understand why development partners do not provide more guidance and active support.

### 2.3.3 Resources

The estimation of costs and allocation of financial, human and institutional resources for preventive anti-corruption approaches constitute a big challenge and have so far been a rather erratic undertaking.<sup>58</sup> Thus in many cases, such as Nicaragua, Pakistan, Tanzania and Zambia, considerable resources were invested in helping to develop anti-corruption frameworks, often with intensive financial injections from international agencies. However, financial and technical support for the implementation phase, either by the government, the development partners or both, tends to be concentrated on the lead institutions, such as anti-corruption agencies or coordination units, while ministries and other public agencies are largely left to self-financing. But the latter also usually do not ask for the required resources either, which may again be related to their missing buy-in.

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<sup>57</sup> A partial exception to this is Nicaragua. Here, an intergovernmental coordination mechanism and a Good Governance Round Table with the participation of the government, civil society and donors allowed the different players to be informed about the objectives of the National Integrity Plan.

<sup>58</sup> Often activities were not even properly costed and sometimes they were simply underestimated.

Nevertheless, many governments have increased the state resources allocated to anti-corruption institutions, in particular anti-corruption agencies, auditor general's offices and the like. Resources are mainly used to increase staff while operational budgets for extra activities are not made available. Given that many anti-corruption initiatives cover areas of the public service, financial sector and justice reform and considering that there are areas of overlap, we admit that assessing the availability of resources is not an easy undertaking.

Apart from financial resources, technical and human resources are missing at all ends. Most public agencies are overburdened with reform, and within the civil service few executives have the management skills to lead their staff through deep processes of change, to spell out responsibilities clearly and to hold staff accountable.

## 2.4 Monitoring and evaluation

In the countries studied, the monitoring and evaluation of the implementation of anti-corruption strategies in terms of progress and impact is confined to ticking the check-box of aspects that need to be considered during the design phase. The lack of monitoring mechanisms further complicates implementation as on the basis of anecdotal information nobody is or can be held accountable and no corrective measures can be taken. The reasons for these weaknesses are numerous. There is little political interest on the part of governments in being held accountable for largely uncommitted promises. Monitoring and evaluation are not considered a priority by the technically responsible institutions either. Monitoring plans are often ill-conceived and rely basically on self-assessments by change-resistant institutions. Another significant difficulty consists in the lack of simple but meaningful indicators that would be manageable by public institutions with weak data collection, processing and analysing capacities.

Further, the monitoring and evaluation approaches are flawed in that they disregard any inputs from non-state actors in order to provide an independent perspective on progress. Looking at the potential impact that independent civil society monitoring can generate,<sup>59</sup> this missing element is all the more severe. In addition, links to the monitoring of other government policies that are expected to have an indirect bearing on reducing corruption are not established and whether or not these have the impact claimed is also not measured.

Last but not least, development partners have paid little attention to the field of monitoring and evaluation, both in terms of providing support for monitoring activities and in terms of adding tangible progress in reducing corruption as an issue for development agreements between the government and the international community.

## 2.5 Role of development partners

The role of development partners (DP) in national anti-corruption initiatives depends dramatically on the general level of development assistance that is delivered to the respective countries. In aid-dependent countries such as Nicaragua, Tanzania and Zambia, DPs are perceived to be the driving force behind anti-corruption initiatives.<sup>60</sup> On the other hand, in countries with less international

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<sup>59</sup> Good examples can be found in Bangalore with the Citizen Report Cards, in Uganda with Public Expenditure Tracking Surveys, in Kenya with the Urban Bribery Index, and in Colombia with the National Integrity Index of Public Institutions, to name but a few.

<sup>60</sup> Even in a country with general budget support such as Tanzania, governance and anti-corruption reforms are financed largely through basket arrangements outside of the general budget owing to the fear that these reforms would not receive the necessary resources in the national budget debate in parliament.

assistance, state reform and anti-corruption processes respond more strongly to domestic dynamics.<sup>61</sup>

In all countries, DPs played an essential role in the kick-off phase for national anti-corruption efforts. They financed some diagnostic work and surveys, they provided technical and financial support for the design of policy frameworks, and in some cases they provided significant support for punitive strategies.

Reportedly, DPs have taken a relatively backbench position in the actual design of anti-corruption policies, strategies and plans, focusing their support on process and format advice. However, the fact that DPs sometimes intervened behind the scenes and that concrete reform initiatives were at times requested as a condition of further aid leads this alleged attitude ad absurdum. Also, DPs can exert intransigent influence when it comes to defending their own priorities, as happened with money laundering and counter-terrorism financing issues after 11 September 2001, as well as with anti-corruption laws to tick the box of international conventions.<sup>62</sup> On other issues, however, which often constitute political priorities for the local population, such as access to information, citizen participation and institutional reforms to strengthen accountability, they do take a backbench position, which is easily resented by the local population as applying double standards.

Despite international recognition that corruption is a deeply political problem, DPs' anti-corruption support continues to centre on technocratic solutions that are not sufficiently supported by national political agreements. This is in large part due to the dilemma that DPs face significant difficulties in identifying ways to support or facilitate national political processes and agreements without being seen as contravening national sovereignty. Also, much attention is given to normative approaches to institutional and behavioural change, while potential benefits from redesigning incentive systems at both the national and international levels are neglected. Furthermore, DPs continue to focus their attention and leverage on the creation of laws and institutions, mostly failing to take a closer look at helping countries to make them work in practice. This is partly attributable to the difficulties in measuring implementation, but this alone is not a good enough excuse.

Development partners in a series of countries came forward with constructive self-criticism, in particular with regard to embedding clear anti-corruption dimensions in national reforms and with regard to their own staffing. A highly important revelation was that DPs realised that they themselves had too little senior expertise on the ground to provide advice on what concretely they should be recommending to the government, on how to integrate relevant corruption indicators into systems for monitoring other reforms, and on how to integrate anti-corruption work with a quest for transparency, integrity and accountability. DPs also do not seem to have a holistic anti-corruption vision for their own work in the country which would allow them to create synergies between the different sectors they work in. It is not clear, for example, in which way DPs' support for national anti-corruption policies and strategies is linked to their support to civil society, parliament and the private sector.

Coordination among DPs around the issue of anti-corruption work varies and seems to be dependent on four major aspects: i) the funding mechanism with which aid is delivered, ii) the degree of aid dependence of a country, iii) the level of country leadership in showing the way and iv) the level of geopolitical interest from the international community.

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<sup>61</sup> With the exception of Georgia, as indicated previously, where pressure from GRECO triggered the “express” drafting of a preventive anti-corruption framework.

<sup>62</sup> For example, the establishment of a Financial Intelligence Unit in Tanzania or the passing of the Money Laundering Act in Indonesia are cases in point.

Last but not least, it is noteworthy that in some countries, such as Georgia and Tanzania, DPs are facing an apparent dilemma. While for some years progress with reform and the existence of political leadership rightly led to praise, these countries are now facing a situation of looming problems or deadlocked progress.<sup>63</sup> Development partners, instead of recognising positive achievements while at the same time drawing attention to the problem areas, are caught in complacency. DPs observe that organised corrupt practices are taking root or still persist even while they praise these countries as “success stories”.

### 3 Conclusions drawn from the country experiences

As the title says, the following analysis is based on the findings of the six country cases studied in detail for this research. Nevertheless, it seems likely that aspects presented here partially reflect experience with anti-corruption policies or strategies elsewhere, too, and that the findings may have relevance for a greater number of countries.

#### National ownership

##### Anti-corruption policies used as a political tool for cosmetic change

Whether home-grown or encouraged internationally, anti-corruption policies and strategies are, in all the countries studied, undoubtedly based on political will and pursue political objectives. However, the objectives pursued by those in power do not necessarily coincide with what the public demands or what development partners would expect. Hence, apparent political will to go against corruption is often employed to strengthen the government’s power base and to eliminate political opponents, in particular through a selectively punitive approach. At the same time, “politically correct” preventive measures are set in motion to win national and international approval, but design and implementation flaws let them die before they even start.<sup>64</sup>

Not all is as bleak, though, and in certain areas corruption has been reduced in a way that ordinary citizens have begun to feel, although it is often not clear whether this was a result of anti-corruption initiatives or other public sector reforms. Achieving tangible results in service delivery is without doubt important and is certainly a good entry point for some “quick wins”.<sup>65</sup> Notwithstanding, these victories should not divert the view from the bigger picture, where governments have shown little desire to increase transparency, reform accountability structures or consolidate the institutional basis so as to make partial improvements sustainable.

In summary, core issues allowing corruption not only to be part of the system but in a number of countries to be the system are not being addressed. Corruption policies and strategies in most of the

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<sup>63</sup> This is particularly the case for Tanzania and to a lesser extent Georgia. In Zambia, the government has to show that it will approve and implement the national anti-corruption policy, an undertaking that has been in the pipeline since January 2007.

<sup>64</sup> One exception is Georgia, where the combination of downsizing government employees, increasing salaries for public officials, reducing corruption in key institutions and a zero tolerance policy brought about tangible results.

<sup>65</sup> To name but a few examples, in Georgia the police and accession to universities were cleaned in one sweep; in Nicaragua the delivery of driving licenses by the police was improved, which brought about a positive change in public opinion vis-à-vis this service delivery; and in Zambia the allocation of land titles, immigration and business registration was simplified and largely computerised.

countries under review aim at cosmetic surgery but not at changing the status quo that benefits old and emergent elites.

Formal democratic processes generate demand for anti-corruption policies but the lack of mechanisms for continuing participation in their full cycle impedes effectiveness

It is undoubtedly of great value in the countries studied that their relatively recent return to formal democratic processes has allowed the public to express their demand for anti-corruption initiatives, be it through elections, the media or other democratic institutions.

However, the political cultures and governmental procedures in most countries do not allow the regular and self-initiated participation of non-state actors in anti-corruption policy making and thus reduce the latter to “closed shops” with a limited basis of support and no external supervision or feedback. In most cases some kind of participation – mostly in the form of consultation – is sought for the design of anti-corruption policies. But when it comes to establishing open and transparent spaces for information exchange or the monitoring of progress, governments have had the tendency to close their doors or only selectively to identify non-state actors. Development partners, as members of the closed shops, have been found to tolerate such proceedings instead of advocating strongly for more openness and transparency in policy implementation and monitoring.

## Content and approach

A focus on norms and institutions does not affect performance in terms of corruption control

The corruption policies studied tend to prioritise the creation or strengthening of commissions, committees and institutions, the review of legislation and the introduction of behavioural norms, such as codes of conduct or ethics. But what happens with their implementation and enforcement? In most countries, anti-corruption measures are not linked with performance and incentive schemes,<sup>66</sup> although political and economic incentives as well as personal motivations to maintain the status quo are considerably stronger than any incentive to do things differently.<sup>67</sup> In addition, benchmarks agreed between governments and development partners are not focused on performance but on the existence of laws and institutions. And formal compliance is “relatively” easy. However, this approach does not capture whether or not laws are actually enforced or implemented, and it is easily distorted through significant flaws in the institutional set-up or in the laws and regulations themselves.<sup>68</sup>

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<sup>66</sup> The above-mentioned experience of Georgia, to combine salary increases and corruption control, is an exception. On a different note, it might be useful also to give more attention to the existence of administrative procedure acts so as to give citizens a legal basis for questioning bureaucratic decisions.

<sup>67</sup> In most countries public officials and political leaders are not held accountable by anybody (that is by superiors, parliament, the public at large or international agencies) for their performance in delivering on anti-corruption promises, and worse, they are not held accountable for malpractice or that of their subordinates either.

<sup>68</sup> In virtually every country studied, public agencies entrusted with an anti-corruption mandate are not given the necessary independence, resources and/or leadership (Georgia’s nomination of the State Ministry for Reform is too recent to be judged), in Indonesia regulations to implement laws are often distorted, in Nicaragua a popular expression says “if the law is approved, the trap is approved (*pasa la ley, pasa la trampa*”), and in Tanzania the new anti-corruption law did not change the Prevention of Corruption Bureau’s dependence on the Public Prosecutor for prosecutions.

### Severe mismatch between political problems and technocratic solutions

Despite the recognition that corruption is to a large extent a political problem, anti-corruption strategies deal with the phenomenon largely as a technocratic and procedural issue.<sup>69</sup> However, without reaching sustainable political agreements at the political leadership level to go beyond superficial change (e.g., to give anti-corruption institutions functional and operational independence from the executive, to open up government decision making to external scrutiny, or to hold public executives politically responsible for the performance of their departments/ ministries), anti-corruption initiatives will not generate the desired results or traction. In short, a stronger focus on transparency and access to information is missing.

Enforcement is politically attractive but is not strongly accompanied by a will to change systems and attitudes which allow corruption to take place

The countries whose governments chose to focus initially on a vigorous zero tolerance policy against corruption through investigations and sanctions, such as Georgia, Indonesia and Zambia, have achieved positive impacts in national public opinion and the international arena. Nonetheless, this way of showing “justice” in action to the public is full of traps and pitfalls if not accompanied by credible signs that zero tolerance applies to ALL wrongdoers, no matter what their political background. The apparent and perceived politicisation of enforcement has in all countries studied led to serious questioning and is gradually nagging away at the public’s trust in the zero tolerance stance. Hence, these governments, sometimes with guidance or pressure from international actors, have more recently taken up preventive anti-corruption policies. It remains to be seen if they will get sufficient political backing, as they will affect the interests of current political, economic and administrative elites.

Integration with core (governance) policies and reforms on paper but not in practice

In the countries under review, anti-corruption policies are linked to core governance policies on paper while integration in practice is missing. Well intentioned efforts did not result in continued integration due to the dispersion of the actors and interests involved. This does not seem to be a conceptual problem but the result of a combination of i) insufficient political will, ii) the weak capacities of anti-corruption lead institutions to take the initiative and help integrate corruption dimensions in the government’s reform agenda, and iii) the lack of awareness, vision and will to collaborate in the public agencies responsible for priority reforms. Considering that many of the anti-corruption strategies take a considerable number of objectives and activities from other policies, this state of affairs is all the more deplorable. Unfortunately, development partners have not devoted much attention to these shortcomings either.

Envisioned solutions are not based on adequate diagnostics

Corruption is often compared to a disease or a cancer and just as in the medical field a reasonable diagnosis is needed to decide how to cure the disease by addressing its causes, not simply the symptoms. However, in most of the countries studied the envisioned solutions have not been based on an adequate diagnosis of the causes, patterns and dynamics of corruption. In most cases, diagnostics were not of a recent date, ad hoc diagnostics were not linked to the final anti-corruption

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<sup>69</sup> This state of affairs can be partly attributed to the disconnection between the political leadership and the technocrats charged with the policy design (see section 2.2), partly to the lack of a vision to tie anti-corruption policies more strongly to democratic and governance strengthening initiatives, and partly to the missing participation of civil society, opposition parties, and others advocating for the opening of democratic processes.

strategy, or the government ruled out the importance of a diagnosis from the start as “everything was known already”. Admittedly, comprehensive knowledge about how corruption works or which incentives are at play for the actors involved is not easy to develop. But the fact that even the existing diagnostic tools are not used highlights a severe weakness in one of the basic pillars for good policy making: sound knowledge

### Dilemma of striking a balance between a holistic approach and strategic prioritisation

One area of tension has clearly emerged between holistic approaches to addressing the complex phenomenon of corruption and the need for a strategic and sequenced approach in order to match available state capacities with the overwhelming dimensions of this problem. The political response to widespread corruption in most of the countries studied does indeed consist in a broad anti-corruption policy or strategy (see section 1.2). Nevertheless, in most countries such an approach has not been overly successful due to the weak capacities of implementing agencies, a lack of continuing advice and mentoring from the anti-corruption lead agency and an absence of monitoring. On the other hand, a solution to this dilemma through an attempt to set priorities and sequence activities (e.g. by starting to work with specific sectors or institutions) has seldom been sought. Whether or not this is a result of the high ambitions of technocrats, a response to pressures from development partners, a deliberate strategy of the political leadership to dilute efforts, or perhaps a combination of all of these, is difficult to tell.

### Addressing corruption risks in development aid is not part of the policy frameworks

Experience from around the world has shown that the delivery of development aid is not free from corruption.<sup>70</sup> Interestingly, addressing the specific risks of corruption in development assistance has not been an explicit or integral part of the national anti-corruption strategies analysed for this study. This may be due to its sensitivity and the potential challenges for relations between DPs and governments. On the other hand, including mutual commitments between DPs and the government to address corruption vulnerabilities in aid could help to level the playing field, in particular in aid-dependent countries. Also, despite the efforts of DPs to harmonise aid in all the countries under review, a series of deficiencies remain, in particular with regard to sharing information, such as diagnostics, analytical work and evaluations (many of which are done for headquarters but not widely shared in the country) and with regard to transparency of information about funding levels and decisions.

## Implementation, coordination and monitoring

### Implementation – playground of vested interests – easily left to itself

Putting anti-corruption strategies into practice is challenging for the simple reason that they cut across numerous public agencies, interact with other public management reforms and, most importantly, encounter high levels of resistance. In most developing countries policy implementation phases are the ones where political and economic actors most vividly play their cards in an attempt to capture, torpedo, distort or sidetrack reforms in line with their interests (see section 1.2). Nevertheless, implementation arrangements, strategies and plans in the countries

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<sup>70</sup> Different aid delivery modalities are associated with different vulnerabilities to corruption, e.g. in budget support risks are associated with the overall accountability of public resources while in project support risks can occur at different stages of the project cycle. Development partners also face risks of corrupt practices within their own bureaucracies.

studied do not include reasonable minimum requirements to address these many challenges along the way.

#### Leadership and oversight: mismatch between institutional capacities and ambitious objectives

Institutional arrangements to coordinate and oversee implementation of the initiatives studied were often ill-conceived from the start. Anti-corruption agencies usually do not have the authority, leadership and political backing to compel powerful line ministries to comply with anti-corruption measures.<sup>71</sup> Often they even face difficulties in demanding compliance with minimal monitoring requirements. In some countries, local experts lamented the absence of a high-level anti-corruption or pro-integrity policy coordinator located close to the president to give anti-corruption policies more visibility and connect the technocratic with the political level. Finally, the roll-out of anti-corruption plans to all public agencies without technical guidance would overburden even countries with strong enough institutions and capacities.

#### Insufficient information and communication create curtains of opacity

Anti-corruption initiatives in the countries under review were often implemented in relative darkness. Governments avoided publishing and disseminating their anti-corruption commitments and hence, the promises contained in policy documents were kept behind curtains of opacity for most political actors and the public at large. In addition, weak access to information hampers non-state actor efforts to monitor whether the government is delivering. While it is relatively obvious that governments may not have incentives to change this, it is less understandable why development partners do not search for more creative ways to help produce and disseminate sorely needed information on baselines, progress and results.

#### Self-reform through self-assessments in change-resistant institutions – how can it work?

In most countries studied, ministries and public agencies were instructed or expected to define how to address corrupt practices within their own institutions. This approach, good in theory, faces two flaws in practice. On the one hand, in most cases no high-level support or guidance was given on how each ministry or public institution was expected to feed into bigger national anti-corruption objectives and how these were integrated with other ongoing reforms in order to avoid stand-alone anti-corruption activities. On the other hand, the focus on self-assessment schemes without any mechanism for external inputs led this approach ad absurdum as naturally agencies reported satisfactory progress with their own (in)action.

#### Non-existence of meaningful monitoring turns anti-corruption policies into paper tigers

In most countries under review there is neither a recent national baseline on corrupt practices nor a conceptual approach that would define how to measure the progress and impact of national anti-corruption strategies. Weak and formalistic monitoring and evaluation approaches report on activities rather than on results, if they generate regular reports at all. They were usually not open to public participation, nor did they consider receiving inputs from civil society organisations or

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<sup>71</sup> Where this weakness was detected, a unit in the president's office or another state ministry was assigned as co-lead, but these were sometimes equally weak. An exception is Nicaragua, where the co-lead for the National Integrity Plan situated in the Ministry of Finance was also responsible for two core objectives of the plan.

academia.<sup>72</sup> It must be noted, though, that sometimes the lack of routine statistical data is an additional difficulty. These significant shortcomings are exacerbated by the absence of political will, institutional capacity and documented evidence to hold anybody accountable for results. Without internal and external monitoring and evaluation, governmental anti-corruption documents end up being paper tigers.

## International factors

### Development partners: an asset and a liability for national anti-corruption strategies

As in many other fields of international assistance, the role of development partners in national anti-corruption initiatives is ambivalent. In some areas international support has proven to be crucial and in others the role played by DPs gives reason for questioning.

DPs have stood ready to support new governments in their efforts to crack down on high-level corruption, try to recover stolen assets and signal to the public that nobody is beyond reach.<sup>73</sup> DPs have also been sources of financing for some anti-corruption diagnoses and other analytical work. Without the provision of technical and financial support to the development of anti-corruption strategies as well as funding for implementation, anti-corruption strategies in the countries studied would not have taken off. Finally, the support of DPs to specific political and institutional players, such as the auditor general offices and civil society organisations, has helped to mix the cards of the political game, although it is not clear whether such funding was part of DPs' specific anti-corruption support or of their other funding programmes.

On the other hand, it is not easily understandable why DPs tolerate and at times support the political manoeuvring of governments that use anti-corruption policies merely as a political tool to look good vis-à-vis national and international opinion. DPs in the countries studied have failed to develop creative countermeasures and to pay more attention to supporting anti-corruption policy implementation.<sup>74</sup> DPs have also paid little attention to integrating a clear focus on corruption prevention and control into other reforms they support.<sup>75</sup> One important and unexpected shortcoming of DPs was the revelation that DPs did not provide sufficient long-term senior expertise at national level to advise DPs and governments on which concrete steps should be taken at different moments of the policy cycle. Last but certainly not least, DPs pursue their own political objectives and strive to show positive results to their home governments or boards of directors. Hence, DPs have a set of incentives to maintain "success stories" even against better knowledge, instead of pursuing a differentiated approach where progress is acknowledged but where deadlocks

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<sup>72</sup> An exception is the monitoring of international treaties, such as the OAS, CoE and UN conventions. But this monitoring is not necessarily in line with the priorities of national anti-corruption policy documents and only partially covers the latter.

<sup>73</sup> In some countries, e.g. Zambia, questions have been raised as to the cost-effectiveness of such a prosecution-oriented approach. But looking into this argument goes way beyond the possibilities of this study. For more detail, see the AGC report evaluating the *Zambian Task Force on Corruption* (2007).

<sup>74</sup> For example, by helping to create open and transparent spaces for dialogue and information exchange on progress, including autonomous non-state actors, by strengthening independent monitoring, or by negotiating with the governments some corruption control performance indicators as part of multilateral development agreements.

<sup>75</sup> The justice sector is in many countries one of those most afflicted by corruption and in many countries development partners support justice reform programmes. Nevertheless, in many if not most cases little attention is paid to how to address specific corrupt practices, which ones to tackle first, how to measure progress, etc.

and regressions are at least made subject to public debate. DPs could eventually even consider applying sanctions.

International treaties are catalysts for legal reform, but require more support for implementation

International anti-corruption treaties have been used in the countries studied by various actors, such as anti-corruption agencies, civil society organisations and development partners, to advocate for reform. In the case of the OAS and CoE conventions, pressure is also exerted through the intergovernmental monitoring mechanisms. Despite positive results in the form of legal and administrative reforms, these suffer from difficulties in being either flawed or distorted and putting them into practice has so far often been neglected.<sup>76</sup> In trusting the potential of the treaties for profound institutional and behavioural change, much more emphasis needs to be given to improving effective implementation of these global legal standards.

In short, anti-corruption strategies in their current form risk being stillborn

This section does not suggest that there are no serious players in any of the countries studied who firmly believe in the need for and usefulness of anti-corruption strategies and who actively engage in anti-corruption efforts. However, anti-corruption strategies in their current form easily derail from their original track – in large part because of the factors laid out in this section – and end up being overly ambitious, unmanageable and non-strategic undertakings. They are often considered by the public and development partners alike as a waste of energy, institutional resources and money, and also divert attention from more fundamental governance failures such as the lack of structural transparency and accountability in such countries. More recent efforts in Georgia, Indonesia and Zambia to draft anti-corruption strategies in order to reinforce strategically and complement existing core governance reforms and policies may generate different experiences, but again implementation arrangements indicate by and large the same problems and avoiding a stillbirth will be a challenge.

## 4 Issues to consider for further policy debate on UNCAC implementation

The results emerging from this research with regard to the usefulness of national anti-corruption policies and strategies in countries with widespread corruption and weak institutional capacities are fairly discouraging. However, this does not mean that all hope is lost or that the solution lies in revolutionising anti-corruption work by reinventing the wheel. Rather, what can be learned with all modesty from these six country cases invites us to take a closer look at why these initiatives do not seem to bring about the desired results, which parts of the policy making and implementation processes require adjustment or even a different approach, and what may be the missing links. It cannot be sufficiently emphasised that the focus of this study is on nationally steered governmental anti-corruption policies and strategies in their totality and does not aim to pronounce opinions or judgements on specific anti-corruption measures which may well be part of the broader policies.

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<sup>76</sup> A recent assessment of public integrity in nine Latin American countries has also shown that what matters is translating anti-corruption measures into practice, not the formal reforms as such (Transparency International, 2005).

As stated at the beginning of the study, the issues raised below are meant to feed into the policy debates on how to provide strategic advice and technical assistance to implementing Article 5 as a gateway to the overall provisions of the UNCAC.<sup>77</sup> At the same time, readers should be cautioned against the applicability of the same approach to all countries around the globe because countries with differing levels of institutional capacity and diverse political cultures and social backgrounds will require and may want to choose varying modalities.

Given that the main audience for this study, that is the States Parties to UNCAC, acknowledges the Convention as an international anti-corruption framework, the following sub-sections try to establish the relevant links between the findings of this research and the implementation of UNCAC. The areas for reflection and debate will be most pertinent for countries with characteristics similar to the countries studied. Nevertheless, some of the issues raised may be relevant for other countries, too.

#### 4.1 What are the options for “effective and coordinated anti-corruption policies”?

Most countries do not have the ability to fight fires on all sides at the same time because they simply do not have the capacities and resources to do so. Also, despite the fact that many countries already fulfil a series of UNCAC provisions, whether formally, in practice or both, it would be unrealistic to expect States Parties to implement the whole Convention overnight, something that even most developed countries are struggling with. Rather, it is argued that a gradual approach is needed if the envisioned anti-corruption policies and measures stand a chance of being effective.<sup>78</sup>

In addition, there seems to be a persistent temptation to interpret “effective and coordinated anti-corruption policies” as the need for a single anti-corruption strategy. The rest of this paper will argue that this is one option but that there are several more – some of which are illustrated below – and that limiting the view to single strategies might even pose a danger to fighting corruption effectively. Anti-corruption work is not a magic bullet, but needs to be nested in broader policies and reforms to improve transparency, integrity and accountability, an approach for which Article 5 provides the basis (see the introduction).

In view of the comprehensiveness and complexity of implementing the anti-corruption measures that are stipulated by the UN Convention, there is a need for States Parties to build a *strategic vision* and political agreement on how to implement the provisions of UNCAC, including the selection of priorities and sequences. Key questions to be asked are how can States Parties make an anti-corruption policy framework “strategic” instead of elaborating long wish lists? And how they can learn from past experience and remedy recurrent shortcomings?

Finally, although it seems obvious it is often forgotten that most countries with apparently high levels of corruption and hence most need for anti-corruption reform tend to have the weakest capacities, both in terms of institutional strength and in terms of human and financial resources. Also, more often than not these countries are already undergoing profound reforms towards restructuring and modernising their state administrations and governance systems, most of which contain important elements of the anti-corruption measures that are anchored in UNCAC. With this

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<sup>77</sup> Among others, we hope that this study provides useful inputs for the efforts of UNODC and UNICRI to develop a technical guide for UNCAC implementation.

<sup>78</sup> See the U4 background document for the Montevideo Workshop on Technical Assistance for UNCAC implementation, organised by UNODC in May 2007 - [www.u4.no](http://www.u4.no)

inflation of reforms in mind, States Parties should be cautious that anti-corruption activities are not conceived as another layer of tasks but integrated, to the extent possible, into the existing ones.

#### 4.1.1 Anti-corruption strategy or alternative approach for coordinated policies?

Taking into account that explicit anti-corruption policies or strategies to date have often ended up paying lip-service and considering that they not only consume large resources but also produce few results, if any, the key question to ask in any given country is whether or not it makes sense to have such a broad anti-corruption strategy at all. This is not to insinuate that anti-corruption strategies are hopeless undertakings in all contexts, but an invitation for critical and creative reflection. Article 5 of UNCAC mandates States Parties to have coordinated anti-corruption policies but does not oblige the Parties to set out on ONE explicit strategy.

One difficulty in providing possible answers to the aforementioned question is that explicit and broad anti-corruption strategies have been an “easy way out” and that they have often been welcomed by the public and development partners alike. However, potential alternatives do not seem to have been explored. Such alternatives could, for example, include i) an embedded approach to addressing specific vulnerabilities to corruption through existing policies and reforms, ii) sectoral approaches to focusing on institutions particularly vulnerable to corruption or sectors particularly relevant for national development, and iii) a focus on coordination and performance monitoring of those institutions that have the mandate and authority to implement a variety of corruption prevention measures.<sup>79</sup> Some questions that would need to be asked prior to developing an overarching anti-corruption approach include: what are the core areas of reform already under way? In which way, if at all, do they already address the prevention of corruption? What essential elements are missing? What are the areas in most need of reform and which ones are most likely to generate impact? How and with what approach can the different ends best be brought together?

Another missing link is the disconnection between the original political will to create an anti-corruption strategy and the subsequent lack of high-level political involvement to reach agreements about core goals and objectives. Well-intentioned technocrats should creatively explore how they can participate more actively in the political arena, how political agreements can be built and which alliances they therefore need to seek. Instead of developing overly ambitious anti-corruption plans with weak implementation arrangements, other strategic approaches may be more appropriate for closing the above-mentioned gap. In this context, it is particularly important to bear in mind that anti-corruption work requires state policies and not only governmental policies. That is, a political consensus about how to address which forms of corrupt practices needs to survive the period of one or more governments if these efforts are to bring about sustainable change.<sup>80</sup>

Finally, good judgement and political astuteness on the part of those national actors with a real interest in driving an anti-corruption agenda forward are needed to decide whether or not an anti-corruption strategy *could* have the potential to generate some traction or be a platform for change *under certain conditions*. Would more modest goals and objectives, stronger implementation

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<sup>79</sup> For example, the implementation of a merit-based recruitment system and codes of conduct for public officials often lies within the authority of the public agency responsible for civil service management. Implementation responsibility for transparent procurement systems often lies within the ministry of finance, a procurement board or a combination of such institutions. Responsibility for the proper management of financial resources usually falls within the realms of at least the ministry of finance and the auditor general’s office. Declarations of assets are handled by specifically assigned or created institutions. Access to information and civil society participation do not fall within the responsibility of any specific public institution but monitoring of public agencies in general is needed to assess whether these principles are being respected in practice, and so forth.

<sup>80</sup> For more detail on this issue in five African countries see the U4 paper on “Measuring ‘success’ in five African Anti-Corruption Commissions” by Doig et al. (2005).

modalities, in particular through clearer implementation arrangements, monitoring, or concrete prioritisation of issues where the government is willing to make concessions (e.g. service delivery in key areas) make a difference?

#### 4.1.2 Integration with core policies – potential for an embedded approach?

Most developing countries are undergoing complex public sector reforms (financial, civil service, justice, decentralisation, etc.) aimed at increasing effectiveness, efficiency, transparency and accountability. As indicated above, governments and development partners frequently consider these reform packages themselves as an anti-corruption agenda. They do indeed contain an important array of provisions anchored in UNCAC (hiring and promotion systems, codes of conduct, procurement and management of public finance, and the like), but so far links between the larger goals of the reforms and anti-corruption work have been weak.

Some anti-corruption policies or strategies have made efforts to build on existing governance reforms, take up key components as part of their own activities and/or complement these reforms. However, horizontal links between the anti-corruption strategies and the main government policies and reforms are often missing, responsible public institutions do not have the awareness or capacity to interact and create synergies, and activities bundled under the anti-corruption strategies are conveyed as add-on activities to ministries and other state organs instead of being integrated into ongoing efforts.

A rethinking of how this approach, specifically to reinforce ongoing initiatives, can be put better into practice is needed. How can anti-corruption dimensions be woven or embedded into (good) governance reforms instead of ending up as unmanageable stand-alone anti-corruption strategies? Which public institution should be assigned responsibility for which anti-corruption measure? What kinds of technical and financial resources would be needed? How could this be monitored? And who could be responsible for coordination and monitoring?

#### 4.1.3 Sectoral approaches – complement or substitute for national strategies?

Extensive and ambitious national anti-corruption strategies are very difficult to manage. Sectoral approaches to preventing and controlling corruption (e.g. in the education and health sectors or in the revenue and customs departments) are easier to steer. While sectoral ministries, resistant to change, are often reluctant to accept instructions from other agencies or ministries, an internally driven process could bring to the fore sectoral champions that would otherwise have remained unnoticed. The risks are that such initiatives can become disconnected from other ongoing reforms. However, that risk could be mitigated by allowing the sectoral pilots to showcase their achievements and thus take pride in their integrity initiative through a well designed communication strategy that highlights results and impacts for citizens. Such an approach may well trigger the interest of other ministries that until then had also been considered resistant to change.

Sectoral anti-corruption approaches would also go hand in hand with a recent trend towards developing sectoral strategies on the basis of sectoral governance diagnostics.<sup>81</sup> Questions that need to be asked in this context include: should sectoral anti-corruption approaches complement or substitute for national strategies? On the basis of what strategic criteria should reform sectors be selected, e.g. importance for national development, existence of strong leadership and potential champions, opportunity for quick wins? What still needs to be known to develop adequate sectoral

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<sup>81</sup> For sector approaches to fight corruption see Campos and Pradhan (2006) “The many faces of corruption”, World Bank.

anti-corruption policies? How can political players involved in this sector be brought together? How will progress be monitored? What kind of international assistance would be helpful?

#### 4.1.4 How can appropriate prioritisation and sequencing be achieved?

So far, there have apparently been great difficulties in developing adequate approaches and guidance on how to select priorities for anti-corruption policies and how to sequence interventions strategically. There is a series of useful analytical tools for taking a snapshot of a country's current situation in terms of its integrity system, the compatibility of its legal system with UNCAC, levels and occurrence of corruption, etc.<sup>82</sup> However, none of these tools seems to be appropriate for guiding the process of strategic prioritisation and sequencing.

Therefore, bigger efforts need to be made to select priorities strategically in line with a realistic estimate of capacities and available resources in the implementing agencies. Further, implementation should be sequenced, again due to the need for careful management of scarce resources and to avoid public frustration as their expectations are deceived. An issue that often seems to be forgotten is that most implementing agencies, be they line ministries, departments or other public agencies, may require continuing technical advice or even coaching in the design and first stages of putting anti-corruption measures into practice. Such advice and mentoring could be provided, for example, by specialised anti-corruption bodies, and yet their capacities also tend to be limited. Hence, thought should be given to making a modest start on anti-corruption policies in some key areas and within those, in only a handful to a dozen agencies. A broader roll-out can follow later with some lessons learned already on board and with some results to show. However, such an effort would only make sense if responsibility and accountability for results were assigned to agencies with the corresponding mandates and if responsibility and accountability were enforceable, through either incentives or sanctions or a combination of both.

Nevertheless, given that many countries have signed and ratified UNCAC and bearing in mind that pressure from the Conference of States Parties to implement the Convention fully is likely to increase, there is a real danger that governments, civil society organisations and development partners may lose sight of a gradual and sequenced approach. Most areas of public administration and the political system require reform, but change on all sides might not bring about any change at all. Hence, a crucial challenge consists in closing the gap between relatively weak capacities to deliver anti-corruption reform in practice and high expectations, both from the national population and the international community.

#### 4.1.5 Could monitoring and evaluation of ongoing governance policies/reforms from an anti-corruption angle help strengthen anti-corruption prevention?

The results from the present research point to the urgent need for meaningful monitoring of anti-corruption policies and strategies. So far, monitoring has been either formalistic, focusing on the existence of laws or institutions instead of their effectiveness, or non-existent.

Most countries are already being subjected to an institutional overhaul which contains elements of the provisions of UNCAC. Given that these reforms are expected to have a tangible impact on corruption, it is worthwhile considering whether it would be useful to dedicate additional resources to the monitoring of anti-corruption results derived from these reforms. This could be done by i)

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<sup>82</sup> For example, the self assessment on UNCAC compliance elaborated and coordinated by UNODC, the already mentioned National Integrity System approach promoted by TI, the World Bank three-pronged surveys on corruption, the UNCAC gap analysis as piloted by GTZ in Indonesia, and vulnerability to corruption assessments applied to certain sectors in Afghanistan, to name but a few.

identifying the specific aspects of core reforms that are crucial for increasing transparency, integrity and prevention of corruption and that are in line with UNCAC, ii) agreeing with all actors involved (government, civil society, the private sector and development partners) which elements will be a priority and which institutions or sectors will be pilots, iii) selecting indicators that allow measurement of progress in reducing corruption or increasing transparency/integrity, iv) carrying out the monitoring activities accordingly, and v) disseminating results and advocating for change.

Such an approach would require, among others, different institutional arrangements, strong support for information management capacities,<sup>83</sup> as well as support from external independent watchdog institutions. It would require long-term investment and might not be an attractive undertaking at first sight. On the other hand, it would allow different ends of accountability, transparency and integrity to be brought together. Considering that in a number of countries progress has been made in reducing corruption in public service delivery, systematic monitoring of such efforts could also contribute to a more regular dissemination of “good news”, which is vital to gaining and maintaining public support.

Last but not least, a monitoring approach would have to struggle in many countries, at least initially, with the poor quality of information, difficulties in getting access to pertinent information, and the like. However, it could also pave the way for gradually opening up public policy processes, as it would help, among others, i) to create a national platform, ii) to match government reform with civil society monitoring,<sup>84</sup> iii) to establish spaces and opportunities for civil society organisations to influence policy, strategy and outcomes, and iv) to build capacity to do ongoing analytical work, both within the government and outside.

#### 4.1.6 What about arrangements for implementation and coordination?

Hitherto, one of the failures of anti-corruption policies and strategies has been a disconnection between those who design the strategies and those who are supposed to implement the measures therein contained. The discrepancy between the ownership of the design and the non-ownership of implementation is further exacerbated by the often relatively low hierarchical rank of the agencies tasked with the coordination and oversight of implementation. Hence, public institutions which have a mandate to implement specific preventive anti-corruption measures need to be given far more prominence at the design stage and subsequently to be held responsible for results in implementing them. However, the political leadership of the country also needs to demand this actively from its public sector chief executives and hold them accountable for progress.

Bringing harmony to the institutional framework by making sure that mandates are clearly defined and well understood and that coordination and interaction are streamlined is both a response to and a sine qua non for tackling the root causes of the corruption problem. This not only means a clearer definition of the different mandates and outlining of the institutional hierarchies but also a better understanding of where and how the different mandates and responsibilities meet and interact with each other.

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<sup>83</sup> The information regime of the country would have to be analysed in order to match objectives and expectations with capacities, e.g. what kinds of capacity are there to produce information, which capacities exist to use this information, what kind of monitoring already exists and who uses the information for what purpose? Also, links with other efforts to strengthen the government’s information regime would have to be created.

<sup>84</sup> Continuous civil society monitoring of public sector performance in certain areas of the government’s activities has helped to bring about change in a series of countries (see section 2.4). Matching desired government reform with independent monitoring from civil society could generate a powerful momentum for change.

Overall responsibility for coordination and oversight needs to be assigned to a high-level political authority which has the political mandate and support to compel powerful line ministries to follow through on their own commitments as well as with presidential instructions. Such a mandate could be assigned to an important cabinet minister, a lead figure in the president's office or a similarly high-level authority. Specialised anti-corruption bodies, if already existent, could be in a good position to facilitate coordination and oversight as long as they can operate in tandem with the aforementioned top-level political authorities.

## 4.2 Fighting corruption by fighting corruption – is this the way to go?

It is worth highlighting again that fighting corruption is not an end in itself. The big issues for most countries today are poverty reduction, economic development, income distribution, deepening democracy and security. Those responsible for the design of anti-corruption policies need consciously to take into account that the anti-corruption efforts are at the service of these higher development goals.

Now, anti-corruption policies are based on the assumption that corruption is a failure of governance systems or an aberration of the system. While this approach is certainly valid for countries with relatively well functioning institutions, in countries with weak governance systems and institutions corruption seems to be the system and, in addition, informal institutions have significant influence over formal institutions. In such an environment the fight against corruption is waged by those involved in the very practices they are supposed to fight. In particular, preventive measures focusing on the supply side of government action, such as codes of conduct, declarations of assets, merit-based appointment systems, reform of procurement procedures, and the like, are easily reduced to cosmetic surgery.

In such a context the question arises whether an approach that concentrated on widely promoted antidotes to corruption, such as transparency and accountability, would make more sense. For example, would it be possible gradually to increase transparency by opening up government decision making processes to the public, by guaranteeing and providing access to information and by fostering civil society participation?<sup>85</sup> A basic issue that also needs to be resolved is whether a country wants to formulate a “negative”, that is anti-corruption, approach, or a “positive”, that is pro-integrity or transparency, approach.

## 4.3 Issues for development partners to consider

UNCAC provides an opportunity for a coordinated and harmonised approach to the provision of assistance to States Parties but it also poses a big challenge to continue to pursue too much at once, in particular through the promotion of single anti-corruption strategies, whose effectiveness and appropriateness in all contexts is put into question.<sup>86</sup> So what can development partners do to foster implementation of Article 5 as a gateway for UNCAC implementation?

First and foremost, DPs should use and promote UNCAC as a binding legal and political international commitment to further good governance.

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<sup>85</sup> Experience in a number of countries has shown encouraging results if such an approach is applied in the budget formulation and execution processes, in the appointment of senior officials, in procurement and in party financing, but also in the health and education sectors, for example, all areas that are also relevant for UNCAC implementation.

<sup>86</sup> The first draft of the Technical Guide for the implementation of UNCAC Article 5, developed by UNODC, suggests, for example, that States Parties should develop one anti-corruption strategy for the implementation of UNCAC.

Secondly, they should recognise Article 5 as the “gateway” for the implementation of UNCAC, but not as an automatic obligation for one single national anti-corruption strategy. For this purpose, they should help States Parties to identify different options for coordinated policy frameworks and provide experience-based information about their advantages and disadvantages. They could help to analyse in more depth the different modalities and frameworks that countries have chosen to implement and coordinate their anti-corruption policies in order to broaden the body of documented experience. This could include, for example, in-depth analysis of specific approaches, or comparative studies of similar approaches, to explore what works and what does not under which conditions. Instead of encouraging the drafting of overly ambitious strategies and plans, development partners could rather advocate a more modest approach and help facilitate the strategic selection of priorities.

Third, DPs need to make every effort to strengthen the links between anti-corruption and governance reforms. Taking into consideration that many of the preventive anti-corruption measures enshrined in UNCAC are or will be implemented through public sector management or broader governance reforms, the anti-corruption work needs to be handled as part and parcel of the governance agenda and not as a separate sector. This needs to be so both at country policy levels and at international development partner policy level. Conceptually, this is often the case, but it is not necessarily put into practice on the ground, mostly due to i) the persistence of “silo” approaches to sector reform and ii) the “silo” visions and expertise of international staff and experts.<sup>87</sup> The following paragraphs refer to this point:

- DPs would do well if they gave more attention to helping governments to introduce or “mainstream” strategic anti-corruption dimensions into their core policies and reforms,<sup>88</sup> in particular when these are supported by international aid. Sector- or institution-specific vulnerability to corruption assessments and subsequent risk management plans could be supported and mentoring for implementation provided, to give but one example. In many countries where addressing corruption explicitly continues to be a sensitive topic, this would also help to find an alternative.
- DPs should invest more effort into providing continuing anti-corruption training of their staff and into mentoring sector specialists in anti-corruption approaches. The latter is particularly relevant to build the necessary bridges between anti-corruption and sector work.
- In countries that receive considerable development assistance, DPs could also consider reviewing their staffing profiles and expertise on the ground – possibly as a collective exercise – with a view to supplying the requisite senior expertise to i) provide continuing strategic advice to DPs on what kind of anti-corruption initiatives they should support, ii) give guidance to the government and DPs on how anti-corruption dimensions could be incorporated into ongoing or planned reforms, iii) build bridges between the different sector teams, iv) support the government in its coordination and oversight, possibly through mentoring and coaching of

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<sup>87</sup> As indicated before, civil service, financial management, justice sector and decentralisation reform, for example, often do not address specific vulnerabilities to corruption within these areas of reform. Although corruption often hinders progress or success in these very reforms, the issue does not seem to be on the radar screen of those who are responsible for them (both within the government and amongst supporting development partners). Also, international experts tend to have specific expertise, say in financial management, public sector or justice reform, but many of them do not have specific knowledge and expertise in the complexities of anti-corruption work. In contrast, those who have broad anti-corruption experience do not necessarily have specific sector knowledge.

<sup>88</sup> In a recent international meeting on justice sector reform in Afghanistan, with the participation of most DPs, corruption was not even on the agenda although the justice sector is widely perceived as being most affected by corruption.

the responsible authorities, and v) facilitate information exchange among DPs on initiatives relevant to anti-corruption.

Fourth, they should promote open and transparent dialogue between governments, themselves, parliament and non-state actors to assess progress. DPs should promote openness and transparency in their development agreements with partner governments as well as in the regular monitoring processes in order to allow for external scrutiny and to foster the accountability of government to parliament and civil society. This is all the more important when the tendency to pursue general budget support is taken into consideration as this aid delivery modality strengthens in particular the executives of partner countries but does not necessarily deepen democratic accountability.

Fifth, they should increase the knowledge and understanding of corrupt practices, their forms, manifestations and dynamics, disseminate the findings widely and ensure public access to them. Relatively recent efforts to develop new analytical tools and assessment instruments should be strengthened and results widely shared. What kind of specific knowledge to produce will depend, though, on the context and needs of each country.

Sixth, DPs should invest much more into fostering both effective internal monitoring and evaluation as well as non-state assessments of anti-corruption policies, e.g. from parliaments, universities and civil society organisations. Bearing in mind the recurrent systemic weaknesses of (independent) monitoring of the progress and results of anti-corruption policies, DPs should search creatively for appropriate ways to help remedy this situation and link the potential “power of information” specifically to the point made above about the promotion of transparency and participation, thus helping to empower local actors to carry the flame:

- More effort needs to be made to advise governments on the design of simple but performance-oriented monitoring mechanisms and especially indicators. In this context, DPs could also consider providing, at least initially, mentoring for implementation agency staff to deal with the monitoring requirements.
- Such efforts would need to be connected to ongoing efforts towards strengthening the country’s information management system. DPs could also help to assess which kinds of information on issues relevant to anti-corruption are already available and which are missing, what information is used by whom and how (this should not be concentrated on the government alone but include parliament and civil society), and which capacities and enabling conditions are lacking for making use of the information. Such an approach may help to bring reform supply and demand closer together.
- Development partners should consider strengthening more vigorously external government scrutiny, for example through financial and, where needed, technical support to national research institutes, civil society organisations, universities or the like to produce regular assessments of government performance in corruption control (such as institutional integrity indices, state of corruption reports, public expenditure tracking surveys, service delivery assessments, to name but a few examples).
- DPs should also consider commissioning assessments or surveys about the level of transparency, integrity and accountability within their own operations. Such an initiative would help to strengthen vulnerable areas in aid delivery but above all it would put the development partners onto a “level playing field” with partner governments.

Seventh, despite the progress at headquarters level and, for example, within OECD-DAC, development partners should make greater efforts to bring their actions at country level more into

line with these OECD-DAC agreements, in particular with regard to donor coordination, harmonisation of aid and the joint “Principles for donor-action in anti-corruption”.<sup>89</sup> DPs should lead by example and put greater emphasis still on improving their own standards and practices. Areas for particular attention include increasing transparency in their own decision making and access to information about their development assistance (amount of aid available and disbursed, recipients, criteria for disbursement, selection of consultants, evaluations, performance assessments, analytical documents, etc.).

Last but not least, development partners should critically review their relations with partner governments when the latter do not comply with mutually agreed commitments. More often than not, DPs choose not to show discontent for a variety of reasons, of which two seem to prevail: i) government-donor relations should not be burdened for fear of negative consequences for overall development assistance, and ii) donors themselves have a range of incentives to report satisfactory performance back home. Nevertheless, the dilemma between pursuing the “bigger goals”, such as poverty reduction, and tolerating malpractice needs to be reviewed as there is certainly more room for pragmatic “grey zone” approaches which avoid an “either-or” answer.

By way of concluding, it should be reiterated that the study cautions against the applicability of one and the same approach to implement Article 5 of UNCAC in all countries around the globe. Countries with different degrees of institutional capacity, diverse political contexts and social backgrounds will require and may want to choose varying modalities. In addition, the temptation to interpret “effective and coordinated anti-corruption policies” as the need for a single anti-corruption strategy points certainly to one option, but there are several more. Last but not least, partner countries, where necessary and desired with the support of development partners, should consider pursuing anti-corruption work with effective modest targets instead of ambitious but unfeasible promises.

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<sup>89</sup> [www.oecd.org/dataoecd/35/52/39678483.pdf](http://www.oecd.org/dataoecd/35/52/39678483.pdf)

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Anti-corruption policy making in practice:

## Georgia – A Country Case Study

Jessica Schultz and Archil Abashidze

**U4 REPORT 1:2007 PART 2A**



## Contents

<b>ACKNOWLEDGEMENTS .....</b>	<b>58</b>
<b>1 COUNTRY BACKGROUND.....</b>	<b>59</b>
1.1 RECENT GOVERNANCE REFORMS.....	61
1.2 SCOPE OF CORRUPTION IN GEORGIA.....	62
1.3 HISTORY OF ANTI-CORRUPTION INITIATIVES .....	64
1.4 MAIN PLAYERS.....	66
<b>2 THE FACTS OF ANTI-CORRUPTION POLICY MAKING.....</b>	<b>69</b>
2.1 ORIGIN AND RATIONALE OF ANTI-CORRUPTION STRATEGIES, 2000 - 2006 .....	69
2.2 DESIGN OF ANTI-CORRUPTION STRATEGIES.....	70
2.3 PROVISIONS FOR IMPLEMENTATION .....	73
2.4 SUPPORT OF DEVELOPMENT PARTNERS FOR THE DEVELOPMENT OF ANTI-CORRUPTION STRATEGIES	74
<b>3 ANALYSIS.....</b>	<b>75</b>
3.1 CONTEXTUAL FACTORS THAT FAVOURED OR IMPEDED ANTI-CORRUPTION POLICY MAKING .....	75
3.2 MAIN DRIVERS AND OPONENTS OF CHANGE .....	76
3.3 RATIONALE AND POLITICAL UNDERPINNING FOR THE CHOICE OF POLICY OPTION .....	77
3.4 ROLE OF DEVELOPMENT PARTNERS.....	77
3.5 INTERPLAY WITH RELATED GOVERNANCE REFORMS AND ASSOCIATED ACTORS.....	78
3.6 FACTORS THAT FACILITATE OR HINDER IMPLEMENTATION .....	78
<b>4 LESSONS LEARNED.....</b>	<b>80</b>
<b>5 BIBLIOGRAPHY .....</b>	<b>83</b>

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The country case study on Georgia was produced on the basis of a literature review and qualitative interviews with a broad range of key interviewees. The authors would like to thank Lili DiPuppo, Tamuna Karosanidse, and Ghia Nodia for their insightful comments on earlier drafts of this study, in addition to all those who have generously provided their expert knowledge, political insights and time to contribute to this undertaking in Georgia. We sincerely hope that the content will be useful for further anti-corruption initiatives in Georgia as well as in other countries.

# 1 Country background

In the sixteen years since Georgia achieved independence from the Soviet Union, this country of 4.5 million people has struggled with civil conflict, entrenched corruption and economic collapse. Despite steady economic growth, reduced corruption and relative political stability following the so-called “Rose Revolution” in 2003, over half of all Georgians still lived below the poverty line in 2006 (US Dept. of State, 2006). Efforts to institutionalise reforms as a shield against the shifting tides of political will are still at an incipient stage.

## A short political history (1990-2007)

Shortly after Georgia’s first multiparty elections in October 1990, chaos broke out in the newly independent country. The Supreme Council of South Ossetia – one of three autonomous regions with close ties to Russia – declared a separate state of South Ossetia. The Georgian government’s effort to re-establish control over the region by military means degenerated into low-scale war that lasted until a ceasefire was secured in 1992. Georgia’s President Gamsakhurdia, representing the nationalistic “Round Table Coalition”, proved incapable of securing the support of Western powers and faced critics even among his closest allies. Relations with Russia quickly deteriorated. Gamsakhurdia was removed in a coup in the winter of 1991, and Eduard Shevardnadze formally assumed power as head of state in October 1992.

Civil unrest permeated this transitional period. Supporters of Gamsakhurdia who refused to recognise Shevardnadze’s authority took control of Megrelia, in western Georgia. Local warlords and paramilitary groups soon controlled most parts of the country. In August 1992, Georgian troops entered Abkhazia, unleashing some of the bloodiest fighting witnessed since the breakdown of the Soviet Union.

The fighting ended in September 1993 in full defeat of the Georgian forces. The terms of the ceasefire were finally established in April 1994, leaving hundreds of thousands displaced and local infrastructure devastated. Both the Commonwealth of Independent States (consisting of Russian peacekeeping forces) and the United Nations Observer Mission in Georgia (UNOMIG) monitor compliance with the ceasefire agreement in Abkhazia. The Organization for Security and Cooperation in Europe (OSCE) now monitors the ceasefire in South Ossetia. Both these “frozen” conflicts continue to pose significant obstacles to healthy development in Georgia.

By 1995, after stabilising the political situation, Shevardnadze’s government adopted a new American-style Constitution. Shevardnadze was elected President and his party, the Citizen’s Union, won the majority of seats in the Parliament. Over the next several years the regime introduced civic and political freedoms and established the conditions for a relatively independent media to emerge. In general, however, Shevardnadze ran “a bureaucratic-patrimonial state, corresponding to the type of politics that had in practice prevailed in Georgia since the 1970s” (Aprasidze, 2004, p.181). The system of governance was highly focused on the President’s personal authority (leading Georgians to debate what would happen when he was gone), which allocated power among “a range of informal groups, creating new ones (often called ‘families’) and dissolving old ones at will, playing them off against each other and always keeping a tight grip on the reins of power” (Aprasidze, 2004, p.181).

To strengthen Georgia’s international image and secure financial and political support, Shevardnadze created a reform-oriented wing among his supporters. Mikheil Saakashvili, future President of Georgia and then Minister of Justice, made his name as a member of this group by

openly addressing corruption issues – even naming corrupt sitting officials – during government meetings. Shevardnadze, however, refused to act on the accusations made by his energetic young minister. By the early 2000s, Shevardnadze had lost much of his public support. In addition to widespread corruption, critical problems included increasing political fragmentation within the ruling party and delays in paying public salaries and pensions.

In 2003, the government's obvious manipulation of parliamentary elections catalysed massive public demonstrations known as the "Rose Revolution". On 23 November 2003 Shevardnadze was finally forced to step down from office. Saakashvili received an overwhelming 96 percent of the vote in the presidential elections that took place in January 2004, while his party, the United National Movement, carried repeat parliamentary elections in March 2004 with about 66 % of the vote.

### Governance progress

Today, Georgia is a democratic republic, with a President elected for a five-year term and a unicameral parliament with 235 seats. The Saakashvili government has undertaken a radical reform agenda (see section 1.1 below) to stabilise the economy and dramatically reduce levels of corruption. Tax revenues, at a low 13.9 percent of GDP in 2003, increased to 22.9 percent in 2006 (GEPLAC, 2007). The surge in income, collected in part from former officials and businessmen suspected of corruption, helped secure a fiscal surplus of 2.3 percent of GDP in 2004 (World Bank, 2005). In the World Bank's "Doing Business" report of 2007, Georgia earned the title of world's "fastest reforming economy", and ranked as the 37<sup>th</sup> easiest place to do business (on par with countries such as France and Spain) (World Bank, 2007). GDP growth is expected to grow by an average of five percent during 2006-2008, although the unemployment rate remains high at 12.6% (World Bank, 2006).<sup>90</sup>

The Western-trained young leaders in Saakashvili's administration have reinforced Georgia's European orientation. Integration into the North Atlantic Treaty Organisation (NATO) and eventually the European Union are key policy objectives. Reforms within the military, in particular, have brought the country closer to NATO requirements. In September 2006, NATO granted Georgia Intensified Dialogue on future membership.

Still, many governance challenges remain. Following the movement of most of the former opposition into the current administration, today's opposition parties are weak and disunited. Despite the decentralisation policy passed in May 2005, and recent elections to fill local councils, the executive still exercises concentrated (what many call excessive) power over important policy decisions. Weak bureaucratic capacity hampers the country's ability to deliver quality services and ensure strong fiscal management. Lack of confidence in the Georgian courts, which have been plagued by widespread political interference with the higher levels, remains an obstacle to domestic and even foreign investment. Furthermore, a series of questionable property expropriations during the past few years have undermined confidence in the government's commitment to a robust property rights regime (Transparency International-Georgia [TI-Georgia], 2007). According to the World Bank's Country Strategy for Georgia, risks to current progress on governance reforms include: (1) a potential weakening of the political will to overcome vested interests; (2) inadequate progress on strengthening expenditure management and reducing fiduciary risks; (3) an exacerbation of civil conflict; (4) the impact of external shocks on a relatively undiversified economy; and (5) natural disasters (World Bank, 2005).

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<sup>90</sup> Sources inside Georgia suspect the real unemployment rate is probably higher.

## 1.1 Recent governance reforms

The first major wave of reforms following the Rose Revolution aimed at dramatically reducing corruption. The new executive argued that a consolidation of its own power was required to achieve this goal, and in fact the measures it selected reinforced decision-making authority in the hands of a few individuals (Di Pippo, 2007). These measures included: 1) prosecuting or plea bargaining with corrupt officials (and thus replenishing depleted state coffers through the return of stolen public funds), 2) simplifying economic transactions (i.e. abolishing licenses, cutting taxes, etc.) and 3) implementing structural reforms such as downsizing staff, raising civil service salaries, and reducing the number of state ministries and other government agencies.<sup>91</sup> In particular, the well-publicised arrests of bureaucrats, businessmen and others created the perception that the government was serious about fighting entrenched corruption.<sup>92</sup> Many reform priorities of the time are captured by the Economic Development and Poverty Reduction Programme of Georgia (EDPRP), which identifies improved governance as a precondition for socio-economic development (Government of Georgia, 2003). Sectors most affected by the post-revolution reforms include:

### The police

For many Georgians, the police symbolised everything that was rotten about the Soviet and Shevardnadze regimes. Typically, in order to enter the force, new recruits had to pay significant sums of money, which they recaptured by collecting bribes during their patrols (a portion of which were delivered to superior commanders). Few people were untouched by daily demands for cash on the streets. In 2004, nearly the entire traffic police force was fired and replaced by a “patrol police”. In addition to the new name, the higher salaries, new vehicles, new uniforms and improved training academy succeeded in transforming the image, and people’s actual experience, of the police. During the past three years there have been no (public) reports of requests for bribes by the revamped patrol police.

### The education sector

In the education sector, corruption was reduced through the implementation of a Unified Admissions Exam for prospective university students. Previously, each university administered its own exam through a committee composed of faculty members notorious for demanding bribes. The new UAE, administered yearly since 2005, consists of three mandatory exams and one optional exam, and is widely considered to be fair (Horoschak, 2007). Also in the education sector, school boards were established in 2006 in primary and secondary schools to decentralise administrative decision-making, providing teachers, parents, students and local government officials a greater stake in the effective use of school budgets.

### The security sector

Underequipped, underpaid and burdened with a corrupt conscription system, the Georgian army unravelled under the pressure of the ethnic conflicts in the 1990s. Hiding from the military *commissariat* became a national sport amongst young Georgians and a good source of income for universities offering protection to thousands of service avoiders. Since 2003, however, significant

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<sup>91</sup> Three years ago, for example, the salary of an average staff person in the Ministry of Economic Development was about 30 Euros a month. Now it is approximately 15 times that. In addition, 85% of the licenses and permits previously required to do business have now been abolished. Personal communication, Ministry of Economic Development, May 24, 2007.

<sup>92</sup> Although the public was generally convinced of the genuineness of anti-corruption reforms, some observers suspected early on that the government was exploiting the fight against corruption for political goals.

improvements have been achieved through increased budget allocations and the Train and Equip programme supported by the US government. Spending in the sector remains a key point of contention between civil society groups, which argue for greater transparency, and the government, which claims that its critics do not understand the important security interests at stake.

### The justice sector

Reform of the justice sector has focused in large part on improving the legal framework. A new Criminal Procedure Code includes liberal principles such as the right to an adversarial trial and a prohibition against the use of illegally obtained evidence in court. A system of plea bargaining has been introduced and the Parliament recently passed a comprehensive package of legislation on witness protection. Furthermore, pending ongoing amendments to the Georgian constitution, the High Council of Justice, rather than the President, may soon assume responsibility for appointing judges. A new Law on Judicial Discipline, which took effect in 2006, sets out explicit procedures for dealing with dishonest judges. Despite these legislative improvements, the impact of reform is still open to question. Political pressure on judges, particularly in the higher courts, remains a serious constraint on effective and fair decision-making.

### Freedom of expression and the media

The Law on Freedom of Speech and Expression came into force in 2004. It protects journalists from compulsion by courts, investigators or prosecutors to disclose their sources. Moreover, journalists can no longer be held liable for revealing lawfully obtained state secrets in the press. Other highlights of the law include the effective decriminalisation of defamation, a specific distinction between public and private citizens in libel proceedings, and the protection of publications from libel suits as long as the publisher can prove that he/she took reasonable measures to ensure accuracy. Another important change is that only owners of media outlets face criminal liability, not individual journalists. Journalists, meanwhile, can take editors or owners to court in cases of intimidation or unlawful pressure. In addition to establishing a new legal framework for media freedom, the government abolished the state-controlled television channel (the so-called 1<sup>st</sup> Channel) and created a new public broadcasting company, based on the BBC model, which is managed by a board of Georgian citizens. Many people, however, perceive that despite these changes actual media freedom has diminished since the Rose Revolution. Some of the problems are described in greater detail in section 1.4 below.

Other post-revolutionary reforms have focused on the energy sector, social welfare, public registries, the penitentiary system, election legislation and administrative decentralisation. In addition, a Medium-Term Expenditure Framework (MTEF) has recently been introduced, as well as other improvements in public financial management.<sup>93</sup> Tax and customs reforms include the reorganisation of the tax and customs offices and approval of a new tax code that reduced the number of taxes.

## 1.2 Scope of corruption in Georgia

By the end of the 1990s, Georgia was renowned as one of the world's most corrupt countries. The decision-making process mainly served a narrow elite, centred around the President and his family, while ordinary citizens were left at the mercy of an oversized and underpaid state bureaucracy. The daily life of an average Georgian involved dodging the traffic police as well as common criminals who had bribed their way out of imprisonment. At the same time, more than half the population was

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<sup>93</sup> For example, property registration has been simplified, and the number of licenses and permits required in order to start a business has been dramatically reduced from around 900 to 103 (Karosanidse, 2007).

living below the poverty line and leading a hand-to-mouth existence. Impatience with the government's inability to control corruption served as one of the main catalysts of the Rose Revolution.

There is little doubt that the measures taken by the new government after the Revolution led to a dramatic decrease in petty corruption. The systemic institutional reforms in the police and education sectors eliminated most of the common forms of corruption, which the ordinary citizen felt at once. Surveys conducted in the past few years underscore this improvement. According to Transparency International's Global Corruption Barometer of 2005, for example, 45% of respondents believed corruption had decreased in Georgia over the previous 3 years, while 27% said it remained at the same level. Furthermore, 89% of respondents had not paid a bribe over the past 12 months (and only 7% answered that they had to pay a bribe). However, the amount of the average bribe had increased to over 1000 USD (TI, 2005).

The same survey found that among the most corrupt sectors, the police fell to 9<sup>th</sup> place from its top spot in 2004. In 2005 the judiciary was ranked worst, indicating that despite recent reforms the judiciary is still associated with widespread corruption. Although the frequency of bribery has apparently declined, other forms of abuse, such as political interference, remain of great concern. Religious bodies and the NGOs were considered least corrupt, reflecting the high levels of trust in these institutions within Georgian society.

A similar survey conducted by the International Republican Institute (IRI, 2007) found that 95 percent of respondents had not had to pay any bribes over the last 12 months. Citizens reported that they were more troubled by unemployment, territorial, and general economic growth than by corruption per se. They recorded surprisingly high levels of confidence in the army (86 percent) and the police (66 percent). Again, the survey found that few people had trust in the courts (only 23 percent)

As officials like to point out, Georgia was declared a "top reformer" by the World Bank and the International Finance Corporation, according to the Doing Business survey (World Bank, 2007). This ranking reflects legislative and administrative reforms, including the simplification of procedures for obtaining licences and permits.

Despite the many positive conclusions that might be drawn from these tools, it is important not to overestimate their ability to capture the real situation in Georgia. According to individuals interviewed for this study, corruption is currently most problematic – and most poorly documented – in two areas: the tender process for state contracts, and the privatisation of state companies. Although Georgian law provides that state companies are subject to public bidding, some transactions still take place through direct sale by presidential decree.<sup>94</sup> Favouritism in the contracting processes is perceived to occur at all levels – from bidding for infrastructure projects to the selection of certain banks to manage state payrolls.

It is interesting to note that Transparency International's 2004 Global Corruption Barometer found Georgians among the world's most optimistic populations when it came to prospects for reducing corruption. However, while 60 percent of respondents believed corruption would decrease over the next three years in 2004, by 2005 this number decreased to 38 percent (TI, 2004; TI, 2005). Although the public recognises great achievements in select institutions, including the traffic police and universities, they seem to appreciate the need for a further deepening of reform.

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<sup>94</sup> The most recent and notorious case in this regard may be the latest case of operating rights for Georgian Railway, which were given to an obscure British firm without any tender.

### 1.3 History of anti-corruption initiatives

#### Under Eduard Shevardnadze

By the late 1990s, Georgia was frequently referred to as a failing or even failed state. The political situation was described as one of “state capture”, and in fact hardly any sphere of public life was free of corrupt networks that exploited average citizens for the benefit of a select few. The government, demonstrating an exceptional cynicism, often talked about the high levels of corruption and the need to control it, but never took any real action. Ironically, Shevardnadze’s own anti-corruption rhetoric dated from the 1970s when he served as head of the Soviet Republic of Georgia, and he later claimed that “the fight against corruption in Georgia and the recovery of our country from this dreadful illness constraining our national energies has become one of the main tasks of my life and public work” (Government of Georgia [GoG], 2000).

In 2000, during the run-up to new presidential elections, corruption emerged as the burning campaign issue. Two well-known intellectuals, David Usupashvili (at that time working with USAID and now leader of the Republican Party) and the chairman of the Supreme Court, Lado Chanturia, approached Shevardnadze about developing an official plan to address the roots of the problem. The idea, according to those involved, was to commit the government to certain measures as part of the campaign strategy, so that it would be difficult to back out later.<sup>95</sup> Although the President was hesitant about committing, arguing that it would be better to wait until after the elections, it was agreed to push ahead in the hopes that at least parts of the programme might be implemented – if not immediately, then later by more committed leaders. A concept paper was presented to the President, who established a “Group for the Elaboration of the National Anti-Corruption Program” (Presidential Decree 296 (2000)). The Commission included the Chairman of the Supreme Court, the Deputy Minister for Finance, the Ombudswoman, the Prosecutor General, the Chairman of the Chamber of Control, a leading academic and Usupashvili himself.

“The Guidelines for the National Anti-Corruption Program of Georgia”, published in October 2000, analysed the reasons for deep-rooted corruption in the country. These included, for example, state weakness and a lack of civic cohesion, economic crisis, the underdevelopment of civil society, absence of oversight over so-called “power ministries” (Ministry of Internal Affairs, Ministry of Defence and the Ministry of State Security), and a “low moral climate”. Such problems could be overcome only through a strategy that i) addressed impunity through detection and prosecution, ii) implemented preventive measures within state institutions, and iii) ensured public participation. The guidelines even recommended establishing public councils composed of people of high reputation to monitor the future strategy regularly. While the paper also provided some detailed recommendations, it focused on identifying key priorities to be tackled in a more in-depth plan: liberalisation of the business environment, public financial management reform, civil service reform, reform of the law enforcement and judicial sectors, electoral reforms and education reform. An annex to the guidelines listed ten steps to be taken immediately as a sign of political commitment. These included, notably, the replacement of stationary or temporary police posts with a mobile traffic patrol (GoG, 2000).

The authors of the Guidelines debated whether or not an independent agency should be established with responsibility to investigate and/or prosecute corruption cases as well as coordinate overall anti-corruption efforts. However, they decided that such an agency would probably be compromised by corruption itself – just like every other state institution in Georgia. It might also provide the core state judicial structures with an excuse to do even less to fight corruption. They proposed instead to

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<sup>95</sup> Personal communication, D. Usupashvili, 8 June 2007.

establish a special coordinating group to elaborate a strategy, provide advice to the relevant ministries, ensure public involvement and monitor implementation.

In his introduction to the Guidelines, Shevardnadze acknowledged that the document “contains the horrible truth”, by uncovering corruption in its “multidimensional ugliness” (GoG, 2000). However, he took little action to implement the recommendations it contained. In Decree #95 “On Some First Place Anti-Corruption Measures” (2001) he assigned ministers a few tasks noted in the guidelines – including a review of the tax revenue system, amendments to the criminal code and elimination of permanent traffic posts. He also established “The Anticorruption Policy Coordinating Council” to elaborate and enforce a strategy. However, the process quickly lost steam and the Council accomplished very little in its two years of existence. In 2002, Shevardnadze again publicly threatened to punish corrupt government officials through “mass repression”, but nothing ever happened (Horoschak, 2007). As described earlier, this consistent refusal to act triggered even greater dissatisfaction among Georgians with their government, which eventually erupted in the protests following parliamentary elections in November 2003.

### After the Rose Revolution

Initially, following the Rose Revolution, the new government attacked corruption through ad hoc measures aimed more at control than prevention. The powerful Prosecutor’s Office took immediate steps to arrest previously immune officials from the Shevardnadze regime on charges of corruption, sending a strong signal that the era of impunity was over. Many of the detainees managed to reduce their sentences through plea bargaining arrangements that facilitated the return of stolen assets to empty government coffers. Eventually, however, public voices began to question the prosecution-heavy approach, both in terms of its biased nature (targeting, for the most part, Shevardnadze cronies) and the lack of due process. Many people found themselves imprisoned for long periods of time without being informed about the legal reason for their arrest (Horoschak, 2007). More generally, NGOs and some actors in the international community criticised the absence of a strategy to reduce corruption systematically at its roots.

In addition to prosecuting corrupt officials from the former regime, the new government took quick and dramatic action to clean up a number of notoriously corrupt services, such as the police and the university system. Another early target for the new administration’s anti-corruption activism was the bloated civil service. Initial reforms drastically reduced the overall size of the bureaucracy, through reorganising and eliminating state ministries and agencies.<sup>96</sup> In the economic sphere, initiatives included the privatisation of state assets, reducing the number of required business licences and permissions (by close to 90%), and implementing a more rational tax code. Despite the real impact that these measures had on reducing corruption, civil society and other observers have criticised the government’s actions as ad hoc, and opinions differ as to the depth and sustainability of the current government’s commitment to true reform (Horoschak, 2007).

In response to pressure from international organisations such as the Council of Europe, the President of Georgia eventually, in 2005, established a working group to draft a formal document outlining government objectives in the area of anti-corruption.<sup>97</sup> This group was coordinated by the

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<sup>96</sup> As an indication of the extent of restructuring, the Customs Department reduced its staff by 23 percent and reorganised six times between January 2004 and July 2005. The Ministry of Environment, meanwhile, shrank by 44 percent and reorganised twice (Horoschak, 2007). A Development and Reforms fund created in 2004 with support from UNDP, George Soros and other foreign and local donors helped pay the salaries of key officials during the transition period.

<sup>97</sup> Certain NGOs also lobbied for an anti-corruption plan but it is hard to assess to what degree, if any, their efforts had an impact on the government’s actions.

National Security Council of Georgia (the President's advisory body) and produced a paper which was approved in June 2005. The National Anti-Corruption Strategy, as it is called, is, as of mid-2007, under revision by the State Minister for Reform Coordination, who has responsibility for overseeing reforms that require multi-ministerial inputs.

### The Legal Framework

The Criminal Code of Georgia (2000) addresses active and passive bribery of domestic public officials, in addition to active and passive bribery in the private sector. Accepting illegal presents is established as a separate criminal offence. A new Criminal Procedure Code is expected to be adopted in late 2007, covering investigation and prosecution procedures for corruption-related offences. The Draft Law of Georgia on Conflict of Interest and Corruption (2007) establishes clearer criteria for an illegal "gift" and provides for higher scrutiny of asset declarations by senior public officials. As of mid-2007, Georgia had not yet ratified the United Nations Convention against Corruption.

## 1.4 Main players

### The executive

President Saakashvili was obliged to take swift measures to meet the public's demands for change following the Rose Revolution ("Georgia without corruption" was a major slogan of the movement). In fact, an aggressive anti-corruption agenda suited the style of the new administration – it allowed the young leadership to concentrate its own power very quickly through drastic reform measures and high profile prosecutions. It was also able to collect much-needed revenue from individuals who had illicitly enriched themselves during the Shevardnadze era. The executive remains the main driver of reform in Georgia.

### Political parties

The political system in Georgia consists of six major parties, although not all are represented in the current Parliament: the Conservative Party of Georgia, Industry Will Save Georgia, the Labour Party of Georgia, the New Conservative Party of Georgia, the Republican Party and the United National Movement, which as the President's party dominates political life in the country. In general, the party system is weakly institutionalised and highly personality-driven. Coalitions tend to be tactical and unstable, and the opposition generally takes a confrontational, bitterly personal approach to its critique of government policies. Unfortunately, this means that opposition parties have not been able to establish meaningful alternative agendas in the area of anti-corruption (Nodia, 2006).

### The Parliament

Since the opposition holds such a small percentage of seats (35 out of 235), the Georgian Parliament is seldom a place for lively debates. As one opposition member remarked, "the Parliament is incapable of external oversight. Less than 30 people typically attend a parliamentary session, and 20 of them are sleeping".<sup>98</sup> To make matters worse, the opposition, as mentioned, is highly fragmented, and often inconsistent in its demands and attitudes.

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<sup>98</sup> Personal communication, K. Kukava, 28 May 2007.

## The Ombudsman

Georgia has a dedicated, outspoken Public Defender, supported by a sixty-person staff. The Ombudsman documents and reports to Parliament on human rights abuses ranging from torture in prison to property rights violations. In terms of corruption, the Ombudsman has spoken out about cases in which privatisation processes have favoured government cronies, and where foreign businesses that threaten the interests of influential political figures have been unlawfully denied access to Georgian markets.<sup>99</sup> Although the Public Defender's pressure has positively impacted on prison conditions, the treatment of displaced people, and other traditional human rights issues, he has not been able to change practices linked to political corruption. A draft law to strengthen the Ombudsman's office, which would provide for more resources and broader powers, is currently languishing in Parliament.

## The Chamber of Control

The Chamber of Control, established in 1995, is the supreme audit institution of Georgia. Its ambit covers the legislative, judicial and executive branches, local government agencies, special state funds, the National Bank of Georgia and other institutions. However, it is notoriously ineffective – there are still no common standards for carrying out audits in the public sector and the Chamber's human resources are weak. Current reforms aim at improving its capacity to conduct straightforward financial audits in accordance with international standards – still a far cry from the performance audits required to unearth contract irregularities.

## The Prosecutor's Office

The powerful Prosecutor General is appointed by the President with approval from the Parliament for a period of five years. The Office has a presence in Tbilisi (headquarters), the autonomous republics of Abkhazia and Adjara, eight regions and 30 districts. Recent amendments to the Law on Prosecution have both limited and strengthened the Prosecutor's role in fighting corruption. Currently, the Prosecutor's Office both investigates and prosecutes cases of money laundering and abuse of power by high-ranking officials, while other bodies, such as the Ministry of the Interior, have taken on broader investigative functions not related to corruption. Recent reform measures, such as the introduction of a Code of Conduct, aim to reduce the risk of corruption within the Office itself.

## Civil society

Between 1992-1995 the number of Georgian NGOs reached several thousand, supported mainly by Western-funded organisations with a mandate to promote liberal democratic principles (Nodia, 2005). During the Shevardnadze period, these NGOs played the primary watchdog role vis-à-vis state institutions. Following the Rose Revolution, however, civil society suffered a serious setback as many leaders joined ranks with the new government or opposition parties, and funding declined. Many Georgians associate the NGO sector itself with corruption. Other constraints include a sparse presence outside Tbilisi, mutual distrust between civil society and the government, resulting in poor cooperation, and weak ties to the media, which means that advocacy messages are not effectively communicated to the public. A few key groups have, however, consistently worked on corruption over the past several years. These include, among others, Transparency International-Georgia, the Georgian Young Lawyers' Association, and the Georgian Young Economists' Association.

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<sup>99</sup> Personal communication, Office of the Public Defender, 31 May 2007.

## The media

The media sector in Georgia boasts a wide range of print and electronic publications, in addition to TV and radio programmes. Television stations such as Rustavi 2, Imedi, Mze and Public Broadcasting regularly cover individual corruption cases under investigation. At the same time, one of the main concerns often heard in Georgia is that investigative journalism is weak. Owners of important media outlets are friendly with high-ranking officials, and journalists have been known to take instructions on how to cover various events (Kvesitadze). Although direct censorship of negative stories can occur, self-censorship, low ethical standards and incompetence are considered more pervasive.<sup>100</sup> Those outlets that are critical face credibility concerns because their coverage is perceived to reflect the owners' personal attitudes more than any objective analysis.

## Development partners

Since the Rose Revolution, control of corruption has become more an implicit than explicit goal of development assistance in Georgia. Under Shevardnadze's regime the picture was very different – USAID, the Open Society Georgia Foundation (OSGF) and others invested large sums of money in anti-corruption legislation and advocacy. Today, major development partners, including the US government, the World Bank, the European Commission, OSCE and the UN maintain diverse portfolios, targeting everything from conflict resolution to energy and transportation development to legal and administrative reform (US Dept. of State, 2006). As a result of the widespread structural and legislative reforms already undertaken, Georgia became eligible for the Millennium Challenge Account and signed a compact with the Millennium Challenge Corporation in September 2005. This agreement, worth USD 295 million over a five-year period, will support rehabilitation of regional infrastructure, agriculture, and private sector development (US Dept. of State, 2006).

In the area of good governance, the World Bank, DFID and the Dutch Embassy have pooled resources to improve capacity of the supreme audit institution (Chamber of Control) and to institutionalise more transparent budget planning by the Ministry of Finance. The European Commission funds activities through the framework of the European Union-Georgia Action Plan, including the implementation of judicial sector reforms. Among the smaller actors, the Swedish development agency SIDA funds the Ombudsman's office and other initiatives in the area of criminal justice. OSGF supports a consortium of watchdog NGOs which monitor different areas of public spending.

According to some development professionals working in Georgia, corruption is a sensitive topic to take up in diplomatic and technical dialogue. The administration is extremely defensive when it comes to any critique of its anti-corruption activities, and for the most part donors agree that the government has achieved a great deal. However, this image of Georgia as a success story in terms of corruption control, which donors are eager to promote, threatens the possibility of truly frank debate about the challenges that remain.

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<sup>100</sup> In certain regions, however, there have been reports of less-than-friendly government pressure brought to bear on local journalists (Kvesitadze, p.2).

## 2 The facts of anti-corruption policy making

### 2.1 Origin and rationale of anti-corruption strategies, 2000 - 2006

#### Catalysing factors

As described above, international pressure, flagging public support and Shevardnadze's need to pacify the reform wing in his own party triggered the first effort to develop a comprehensive anti-corruption program in 2000. Influential development partners, such as the World Bank, USAID and OSGF had set the stage, by introducing international experiences through conferences and exchanges and by providing financial support.<sup>101</sup>

The concrete catalyst for drafting a formal national strategy several years later came in the form of mainly international pressure to reduce the ad hoc nature of the government's anti-corruption campaigns. As a member of the Council of Europe's Group of States against Corruption (GRECO) since 1999, Georgia was urged by evaluators in 2001 to develop a strategy describing the state's policies for tackling corruption.<sup>102</sup> In a follow-up report (2003), GRECO noted that Georgia had failed to comply with this recommendation, and started non-compliance procedures against the country. The threat of entering this process sparked a more serious commitment to produce something to satisfy GRECO's demands. According to the Deputy State Minister for Reform Coordination, "without GRECO there would be no anti-corruption strategy".<sup>103</sup> However, the strategy satisfies additional interests as well. Other multilateral initiatives in which Georgia participates, such as the Organization for Economic Co-operation and Development's (OECD) Anti-Corruption Network for Transition Economies, have also pressured the country to produce a coherent policy framework. Civil society organisations within Georgia have lobbied for a document they could use to monitor government reforms (Karosanidze, 2007).

#### Rationale of anti-corruption efforts

According to the authors of the 2000 Guidelines, the targets for a strategy to attack corruption seemed quite obvious. Everyone knew that low civil service salaries, the discretionary power of high-ranking officials and excessive bureaucratic regulations were among the primary enabling or motivating factors for many corrupt transactions. However, special care was taken to highlight areas that i) impacted moral integrity to a uniquely large degree (hence the focus on education – if professors took bribes, it would be impossible to expect higher standards of behaviour from the tax collector) or ii) had a strong multiplier effect. The net damage caused by a 100 dollar bribe to a customs official was considered less than a one dollar bribe to a political candidate, who would then be obliged to provide endless privileges and contracts to supporters.<sup>104</sup> Therefore, electoral finance reform was also included as one of the six areas of focus.

Today, the anti-corruption agenda has merged into broader policy objectives. Although arrests for corruption offences continue to be widely publicised on television, privately officials concede that corruption is no longer a high priority for the administration. The concrete measures included in the

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<sup>101</sup> Personal communication, Liberty Institute, May 25, 2007.

<sup>102</sup> One of GRECO's 25 recommendations in its 2001 evaluation was to swiftly adopt a comprehensive national anti-corruption strategy.

<sup>103</sup> Personal communication, Office of the State Minister for Reforms Coordination, May 24, 2007.

<sup>104</sup> Personal communication, D. Usupashvili, June 8, 2007.

Action Plan are determined more by the shape of existing reform efforts and external demands (i.e. GRECO recommendations) than by any kind of corruption risk analysis. To the extent that policies are formally coordinated, the main driver has been the need to “look civilised”, as one official put it, before European partners.<sup>105</sup> Interestingly, Georgian officials lobbied to call the 2005 document a Good Governance strategy but were dissuaded by the Council of Europe, which wanted to maintain a clear anti-corruption profile.<sup>106</sup>

## 2.2 Design of anti-corruption strategies

### Process and stakeholder involvement

The 2000 “Guidelines for the National Anti-Corruption Program of Georgia” were drafted by a small group of intellectuals and high-ranking officials who reported directly to the President. Despite the limited number of people formally involved, there was also an extensive public feedback mechanism whereby the policy document was sent, together with a prepaid envelope, to 250,000 households for comment. Efforts were made to identify key communicators within each area, including NGOs, politicians, hairdressers, bus ticket sellers, etc. The working group received 10,000 responses.<sup>107</sup> Unfortunately, the lack of follow-up action by the government only fed public cynicism about the whole process.

The 2005 strategy was developed by a working group established within the President’s advisory body, the National Security Council (NSC). This group consisted of government representatives, NGO members (including TI-Georgia, the Georgian Young Lawyers’ Association, and the Georgian Young Economists’ Association), and an expert advisor provided by the Council of Europe and the American Bar Association (ABA). Progress was slow and participation inconsistent, resulting in a lack of continuity from one meeting to the next.<sup>108</sup> Furthermore, although the working group requested formal inputs in the form of institutional or sectoral strategies from individual ministries, most of the documents received lacked the detail needed to shape the final content meaningfully (Karosanidze, 2007). Just before the deadline in June, the Council of Europe organised a conference to review the draft strategy together with ministry staff as well as a handful of active NGOs. The resulting paper was revised, reflecting the compromises reached during the conference. To the general reader, its provisions appear eclectic and asymmetric in terms of their detail (see below). The strategy was adopted by a presidential decree in June 2005.

Responsibility for drafting an Action Plan following from the strategy fell upon the State Minister for Reform Coordination, created in December 2004 to coordinate cross-sectoral and certain high profile programmes. An internal working group within this ministry, which included a few members from the NSC committee, finished work on 31 August 2005. The Action Plan was officially adopted by Decree of the government in September 2005. It was presented to a group of NGOs, diplomats and journalists at a round table funded by the National Democratic Institute’s Georgia office (Karosanidze, 2007).

In March 2006, President Saakashvili signed a new decree, “On Approval of the Action Plan” (#155). This document was similar to the September 2005 Action Plan, but included

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<sup>105</sup> Personal communication, Office of the State Minister for Reforms Coordination, May 24, 2007.

<sup>106</sup> Personal communication, Council of Europe, May 31, 2007.

<sup>107</sup> According to individuals involved, there was reason to believe that many of the envelopes were intercepted (test envelopes never arrived from certain areas), so the figure of 10,000 might only capture a fraction of the actual number of responses sent back. Working group members held a news conference to publicise their suspicions about the lost envelopes.

<sup>108</sup> Personal communication, TI-Georgia, 23 May 2007.

implementation timeframes and responsible government and partner agencies. In addition, all government agencies had to designate representatives for an Implementation Action Plan Working Group and report on their progress on a quarterly (rather than monthly) basis (Karosanidze, 2007).

The first annual Action Plan update, presented by the Office of the State Minister in April 2007, is less ambitious than the earlier version. This time, NGOs were asked to submit comments on the draft document. Oddly, the 2005 Anti-Corruption Strategy is being revised by the State Minister for Reform Coordination concurrently with the new action plan. The new strategy is, according to the Deputy State Minister, intended to serve as a set of “guiding principles” rather than a formal framework for reform. As of June 2007, the four priority principles include: an efficient and corruption-free public sector; a competitive and corruption-free private sector; development of the judicial system; and development of anti-corruption legislation.<sup>109</sup>

### Knowledge base

Neither the Guidelines produced in 2000 nor the Anti-Corruption Strategy of 2005 refer to independent research on particular corruption problems faced by the country, their causes, consequences or patterns. Today, officials often refer to highly successful reforms, such as the traffic police and university entrance exams, to explain their disinterest in more detailed analysis. “The problems are obvious and we know how to deal with them” is a common refrain when pushed to provide justification for their policy decisions.<sup>110</sup> As mentioned above, efforts to collect sector-specific analyses from the various ministries during the drafting of the 2005 Action Plan produced, for the most part, poor quality feedback.

Despite the absence of an evidence base for recent anti-corruption policies, parallel efforts have been made to quantify key problems. A diagnostic survey conducted by the Georgian Opinion Research Bureau International with funding from the World Bank and USAID in 1998, for example, covered 802 households, 350 enterprises and 206 public officials. The traffic police, the customs service, energy companies and the tax authorities were deemed the worst offenders in terms of corruption. The survey also underscored the importance of improving the business environment, by demonstrating a net negative effect of corruption on enterprises (World Bank, 2000). The April 2007 Action Plan now provides for the development of a unified method of measuring corruption (and therefore the impact of reforms).

### Content and priorities

The “undocumented” anti-corruption strategy of the new administration following the Rose Revolution included the following measures (reflecting, to a large extent, the vision developed by the Anti-Corruption Working Group established under Shevardnadze):

- *Public prosecutions:* Arrests of individuals for corruption offences were, and continue to be, widely covered in the media. The intent was to spread the message that no one would be spared: district chiefs, businessmen, judges and police have all been caught. In addition, plea bargains were negotiated with individuals found guilty of corruption as a means of filling empty state coffers.<sup>111</sup>

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<sup>109</sup> Presentation made by V. Lejava from the Office of the State Minister for Reforms Coordination, U4 Essentials of Anti-Corruption Workshop, 5 June 2007.

<sup>110</sup> Interview, Tamuna Karosanidze, Transparency International, 23 May 2007.

<sup>111</sup> This measure has been controversial because there was no process to keep the transfers transparent, and much of the money was deposited in secret state funds. The last of these funds was abolished by the Ministry of Defence in 2006. Interview with David Aprasidze, 30 May 2007.

- *Rationalisation of the civil service:* Many state agencies were either abolished or merged together. A clear decision was made to avoid establishing parallel structures in the form of independent bodies such as an Anti-Corruption Commission. The severe cutback in the numbers of civil servants enabled substantial salary increases, which were supplemented by funds from the United States government, the Soros Foundation and the United Nations Development Programme to provide temporary cover for key positions, including those of the President and Prime Minister.
- *Deregulation and economic liberalisation:* Measures included privatisation of state assets, simplification of administrative procedures (for receiving passports, business licences, identification cards, etc.), and reform of the tax code.

The formal strategy, approved by Presidential Decree in June 2005, “aims at formation of an effective state management system as well as activation of legal and public feedback mechanisms in order to prevent corruption” (GoG, 2005). The prosecution of high-profile corruption cases, still associated in most people’s minds as the government’s primary anti-corruption activity, is not mentioned. Instead, it focuses on technical governance and legislative reform issues. The main priorities include:

- Preventive measures (civil service reforms, transparency and access to information, publicising political financing sources, reform of the offices of the inspector general, strengthening the Ombudsman’s Institute, refinement of auditing and accounting procedures, and improving procurement processes)
- Creation of a competitive business environment (reducing administrative barriers, establishing a one-stop shop principle for obtaining licences, further refinement of tax administration, legislative reforms)
- Institutional reform of law enforcement bodies (refinement of anti-corruption legislation, establishment of a witness protection system, court reforms, better delineation of responsibilities among the various agencies, i.e. Prosecution and Ministry of Interior)
- Cooperation with international organisations (ratification of international treaties, implementation of recommendations by GRECO and the OECD-CAN for Transition Economies).
- Engagement of the public (support to the media, establishment of information bureaux and public monitoring units)

The 2005 Action Plan which followed contained 75 measures loosely based on the above priorities. Some objectives are quite detailed, whereas others are so vague they would be nearly impossible to monitor. For example, the Action Plan calls for responsible ministries to “ensure transparency of the privatisation process” and “establish a jury system”, without further elaboration.

The revised Plan of 2007 again addresses technical, rather than political, issues. The content, however, is more closely aligned to ongoing areas of governance reform: transparency of public finances, improved revenue administration, and changes in the law enforcement system. In addition, it provides for better harmonisation of domestic laws with international anti-corruption conventions. According to the State Minister’s office, this new document is more realistic than the previous version, as it covers measures that the administration has already committed itself to implementing. However, a few GRECO recommendations have also been added. For example, the establishment of a public council within the prosecutor’s office to formalise the involvement of external stakeholders – including judges, NGOs and journalists – in basic oversight functions was not

initially a government priority but is now included as an Action Plan activity for 2008.<sup>112</sup> Other GRECO priorities are conspicuous by their absence, for example the development of uniform rules for human resource management within the civil service.<sup>113</sup> The latest Plan does not clarify coordination issues and provides only superficial indicators for the implementation of most measures. There is no process for external communication, or for engaging with public stakeholders.

## 2.3 Provisions for implementation

### Roles and responsibilities

Chapter Seven of the 2005 Anti-Corruption Strategy establishes the responsibility of each ministry for implementing the anti-corruption measures under its mandate, and to recruit and train the necessary staff to do so. The Government Ordinance by which the Action Plan was approved charged the 30-person State Minister for Reform Coordination's office with coordination and reporting responsibilities.

The State Minister's Office is well placed to compel compliance with the Action Plan measures. The Minister himself, Mr. Kakha Bendukidze, is a powerful and charismatic figure with close ties to the President. In practice, however, the ability of the State Minister's office to carry out its mandate is limited by its small staff and its related lack of capacity to provide technical advice to other institutions. The Anti-Corruption Action Plan Implementation Group (ACIG), a reporting forum composed of representatives from responsible ministries, is not effectively institutionalised and, in practice, most reporting happens informally by phone. Some agencies have also established internal groups to coordinate anti-corruption activities, but as bureaucratic expertise in the area of anti-corruption is generally quite low they also tend not to function too well. One exception is the Legal Taskforce within the Ministry of Justice, which assists with the drafting of anti-corruption legislation.

### Monitoring and communication

The 2005 Action Plan requires simply that ministries report on a quarterly basis to the State Minister for Reform Coordination on their implementation progress. The State Minister then reports twice a year to the President. According to Transparency International-Georgia and other civil society groups, however, this process can often be quite superficial. While measures might be formally in place, in practice they are often not implemented according to international standards.<sup>114</sup>

As described earlier, the Guidelines for the "National Anticorruption Programme of Georgia", developed under Shevardnadze, emphasised the importance of involving the public in monitoring

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<sup>112</sup> Interview, Open Society-Georgia Foundation, 25 May 2007.

<sup>113</sup> See GRECO Recommendation v and vi (2006). This issue has been the source of heated debate within the government, with key figures in disagreement about whether there should be a common process across ministries. The director of the Public Service Bureau, charged with overseeing reforms in this area, was removed in late 2006.

<sup>114</sup> This is the case, for example, with the whistleblowing protections implemented by the Ministry of the Interior. Civil society has complained that reporting was too general in some cases. For example, when reporting on the measure related to transparency of the privatisation process, the SMO reported that the practice of posting information about the sale of property on the Ministry of Economic Development's website ([www.privatization.ge](http://www.privatization.ge)) satisfied this requirement. TI-Georgia has noted that the Ministry is still using direct sale rather than transparent processes such as open auctioning and bidding and that the information provided on privatisations that have occurred or are underway is inconsistent. (Karosanidze, 2007).

and even implementation of anti-corruption policies. This emphasis is completely lacking in the most recent iterations of the Action Plan, which include no provisions to ensure public awareness of the reform process or to promote public inputs. The Strategy mentions only that the implementation reports submitted to the President should be publicised. Oddly, the one reference to public awareness in the 2007 Plan, relating to the development and distribution of information materials, is assigned to the Ministry of the Interior. Outside the formal governmental structures, Transparency International-Georgia has been publishing and distributing monthly reports on key aspects of the reform process as part of its International Commitments Monitoring Programme.

Even within government ministries, awareness of the Action Plan is also perceived to be low. Many high-level officials cannot identify who is involved in the ACIG from their office.<sup>115</sup> A new project under the auspices of the Council of Europe will attempt to revive the ACIG by institutionalising its meetings and expanding membership to include independent bodies, civil society and the business community in addition to government representatives (CoE, 2007).

## Resources

Neither the Strategy nor the Action Plan set out budget requirements for implementation. There is a perception among responsible officials that most of the activities can be done at low expense (i.e. passing a piece of legislation), even though key measures related to transparency, judicial reform, etc. have substantial costs attached. Given the well-established inadequacies in terms of budget transparency in Georgia, it is hard to know how much – if anything – has been allocated for each measure, or from where (Chkheidze, 2007). Even the BDD fails to mention many of the key measures mentioned in the Action Plan.

## 2.4 Support of development partners for the development of anti-corruption strategies

As noted above, the process undertaken by the anti-corruption working group in 2000 received significant support from the international community. USAID and the Open Society Georgia Foundation, for example, provided funds so that members could procure international advice and solicit in-country public inputs. Afterwards, a number of donors supported dissemination activities, including the publication and distribution of the document itself.

A handful of actors such as the Council of Europe and the ABA assisted with the drafting of the 2005 Strategy. Other than funding the publication of the periodic report to the President, however, communication of progress remains a low donor priority.<sup>116</sup> Advice on legislative reform is provided by a Legal Taskforce within the Ministry of Justice, established by the Council of Europe in March 2006 with support from the European Commission. This taskforce – comprising Georgian lawyers, who consult external experts when necessary – focuses on anti-corruption laws required by the Action Plan, and is managed from the Council of Europe headquarters in Strasbourg.<sup>117</sup>

Recognising the need for better coordination of anti-corruption measures, the Council of Europe, with contributions from the Dutch government, recently agreed on a project with the Office of the Minister of State for Reforms Coordination. It too is supervised out of Strasbourg (CoE, 2007).

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<sup>115</sup> In an interview in May 2007, for example, a Deputy Minister of one of the ministries acknowledged that frequent staff turnover made it difficult to keep track of the current point person for the ACIG was.

<sup>116</sup> The OSCE, however, does support NGO monitoring of the government's international anti-corruption obligations, including aspects of the Anti-Corruption Strategy. For more information, see the TI-Georgia website at [www.transparency.ge](http://www.transparency.ge)

<sup>117</sup> Personal communication, Council of Europe, 31 May 2007.

## 3 Analysis

### 3.1 Contextual factors that favoured or impeded anti-corruption policy making

Under Eduard Shevardnadze

(+) Increased pressure to reduce unacceptably high levels of corruption:

Despite Eduard Shevardnadze's success in restoring stability in Georgia following the 1991-92 civil war and his ability to gain international recognition for Georgia's democratic reforms, by the mid-1990s his leadership faced increasing criticism from both international actors and domestic civil society. The Soviet-style administration, combined with institutionalised impunity for elite officials, provided an environment ripe for extensive corruption. Law enforcement agencies, including the Ministry of Interior, were themselves among Georgia's worst violators in terms of corruption. Pressure from the reform wing within his own party, as well as development partners, resulted in his formal support of the Working Group and the Decree 95 "On Immediate Anti-Corruption Activities" (2005) which followed.

(-) Entrenched interests within the ruling elite:

Unfortunately, Shevardnadze's commitment to policy reform proved shallow. By failing to follow up on the more substantial recommendations, Shevardnadze could protect the interests of his other allies, former Soviet apparachiks concentrated at the ministry level.<sup>118</sup> As a well-known political journalist noted, the establishment of the Anti-Corruption Working Group in 2000 was already an empty gesture: "in Georgia, if you don't want to implement anything, create a commission".<sup>119</sup> By setting in motion a process, however, and carrying out a fraction of the recommended measures, Shevardnadze could claim to be acting in the interests of the public, his own reform faction and not least the international community.

(+) Public outrage over government inaction:

The Rose Revolution, with its slogan "Georgia Free from Corruption", marked the end of public patience with Shevardnadze's insincere tactics. The mass protests that eventually led to Shevardnadze's resignation set the stage for dramatic policy reforms on the part of his successors.

Under Mikhael Saakashvili

The new administration, led by Mikhael Saakashvili, faced high expectations in terms of addressing the rampant corruption that characterised its predecessor. This pressure had both positive and negative effects on the development of anti-corruption policies.

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<sup>118</sup> Personal communication, D. Aprasidse, 30 May 2007.

<sup>119</sup> Personal communication, D. Aprasidse, 30 May 2007.

(+) Strong political will to tackle the problem:

Despite a reduction of targeted support from outside actors, measures were taken on the initiative of the executive that visibly improved the lives of ordinary Georgians, for example by reducing bribery within the traffic police and eliminating unfair practices in university admission procedures.

(-) Public pressure for “quick wins”:

The need to be seen acting swiftly resulted in short-term strategies that prioritised prosecution over more sustainable institutional reforms. Indeed, institutional weaknesses, especially in the judiciary, enabled some of the actions most dear to the “anti-corruption” campaign. The well-publicised arrests of corrupt officials were often followed by detention without due process for extended periods of time. Neither analysis of corruption’s causes nor broader consultations with respect to potential solutions were solicited because the issues were perceived to be obvious. This has hampered the development of sustainable policies that address systemic problems.

(+) The carrot of NATO integration:

While the government seems to act spontaneously, international obligations have the potential to impose discipline that otherwise might be lacking from the policy-making process. At the same time, however, the government’s early success in combating corruption has reduced pressure from international actors reluctant to challenge the good image Georgia has achieved.

(-) Weak institutions and other priorities:

The limited capacity of individual government agencies to identify corruption risks and make realistic plans for addressing them has hindered the development of targeted, sector-specific policies. In addition, the severe social, economic and security problems facing the country now occupy a privileged place on the policy agenda.

### 3.2 Main drivers and opponents of change

The drivers and opponents of anti-corruption reform have changed dramatically over the past several years in Georgia. Following a period of mass public outrage over the impunity of high-ranking officials who freely stole from the public purse and demanded bribes for basic services, the public in Georgia has been largely pacified by the measures taken thus far. One reason is that current forms of corruption – associated with state contracts and the privatisation process – tend to be more abstract to the ordinary citizen than those that pervaded life in Georgia before the Rose Revolution. At the same time, obvious abuses of power, such as political interference in the senior judiciary, still do provoke public outrage. Civil society’s role as a driver of change has also diminished, as many of the most influential actors have now moved to key government (and opposition) positions. The civil society groups that actively monitor government reforms are based primarily in Tbilisi and have little impact in the rest of the country.

The executive, despite its revolutionary image, both promotes and hinders anti-corruption reform. To the extent that anti-corruption serves its primary interest – to consolidate power – the government swiftly implements relevant policies to combat the problem. Unlike the Shevardnadze administration, which projected deep cynicism about efforts to change corrupt behaviour, the current government promotes a “can do” attitude to reform. In terms of rhetoric, it reminds citizens of the nation’s pre-Soviet history in which corruption played a much less prominent role in public affairs. Some measures, however, are admitted to the reform agenda simply to comply with requirements imposed by international partners. Critics observe that activities aimed at

strengthening non-executive bodies tend to receive neither the budget nor the infrastructure required for implementation.

### 3.3 Rationale and political underpinning for the choice of policy option

What factors explain the Saakashvili administration's approach to anti-corruption? Its first priority upon coming to power was to prove itself through a serious, aggressive response to the entrenched corruption associated with the rotten old regime. Prosecuting elite and mid-level offenders from all walks of life demonstrated the government's commitment to the public, and sent the message that corrupt behaviour could not be tolerated. Of course, as in most countries, this agenda was tainted by the biased way in which it was pursued – often targeting political enemies.

Another motivation was, as mentioned, to consolidate power in the executive branch. Today, despite numerous efforts in other areas of governance reform, the Prosecutor's Office remains the main arm of the government's anti-corruption activities. Most observers would argue that institutions outside the executive, such as the judiciary, legislature and civil society, are still quite marginalised. Even in the most recent Anti-Corruption Action Plan, many measures relate to better budget planning, a tool which ultimately strengthens executive control.

The desire to modernise following decades of Soviet and Soviet-style bureaucracy has also coloured the particular anti-corruption approach pursued by the current government in Georgia. A recent wave of property confiscations and demolitions in Tbilisi illustrates the blurring of the anti-corruption and modernisation agendas. The government has justified expropriations in central parts of town without recourse to the courts on the grounds that the properties must have been originally gained unlawfully during the Shevardnadze era. Thus, recovering these properties for public use is part a broader de-sovietisation drive.<sup>120</sup> The economic and security benefits derived through greater integration with Europe, meanwhile, has motivated Georgia to make the legislative amendments and technical reforms required to meet minimum standards outlined by its international obligations.

### 3.4 Role of development partners

With the exception of the Council of Europe and the European Commission, corruption is not a distinct priority for many development partners in Georgia. Most donors, like most government actors, view anti-corruption as a logical by-product of general governance reform.<sup>121</sup> As a result, the subject of corruption remains quietly embedded within working groups on topics like the Rule of Law and the "European Neighborhood Policy Action Plan". Certain aspects of the Anti-Corruption Action Plan, such as justice sector reforms, do receive considerable support from the donor community. The World Bank, the Dutch Embassy, and the Swedish and UK development agencies (SIDA and DFID) also jointly fund a major project on Public Financial Management led by the Ministry of Interior. It includes building medium term budgeting capacities, improving information technology so that customs and tax revenues and expenditures are connected within a common system, and support to the Chamber of Control and treasury.<sup>122</sup> The World Bank's Country Partnership Strategy for Georgia (2005-2009) explicitly identifies anti-corruption as a cross-cutting issue within its programme, which includes projects designed to improve efficiency in public

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<sup>120</sup> The Mayor's office's Supervision Agency presents no court order, written notice, or opportunity to appeal. Instead, the "city invokes illegality and the ugliness of the buildings and the need to free up space for 'public use' and reclaim public space that was never meant for public use" (TI-Georgia, 2007),

<sup>121</sup> Personal communication, World Bank, 28 May 2007. For example, the Economic Development and Poverty Reduction Program (EDPRP) acknowledges that reducing corruption is a precondition for establishing employment-generating growth.

<sup>122</sup> Personal communication, Department for International Development (UK), 31 May 2007.

services. It has supported some analytical work, including a corruption survey in the education sector, to inform the design of new policies.

### 3.5 Interplay with related governance reforms and associated actors

The Anti-Corruption Action Plan reflects to a large degree measures that are included already in key planning instruments for governance reform. These include the “Economic Development and Poverty Reduction Program of Georgia” (EDPRP, 2003), the Criminal Justice Reform Strategy (2005) and the Basic Data and Directions for 2008-2011 (BDD), which links strategies and policies directly to the medium-term expenditure framework and annual budget. According to the Deputy Minister for Reform Coordination, “you could basically erase the heading of the BDD and call it the anti-corruption strategy”.<sup>123</sup> To the extent that the newest Anti-Corruption Action Plan focuses on fiscal reforms and transparency of the budget planning process, important features of the BDD, this is true. However, although the 2008 budget has not yet been published, it is notable that certain costly elements of the Anti-Corruption Action Plan have not been referenced in the medium-term ministry action plans annexed to the BDD. One example is the establishment of a jury system to reduce political interference in judicial decision-making.

Anti-corruption reforms are also included within the “European Neighborhood Policy Action Plan - Georgia” (ENP), which went into force in November 2006 for a period of five years. This plan is essentially a political document setting out the objectives of increased cooperation between Georgia and the European Union, and covers areas ranging from reform of the judicial system to the peaceful resolution of internal conflicts. Priority Area 2 of the ENP, focused on improvements to the business and investment climate, in addition to anti-corruption measures, provides for the “implementation of the recently approved National Anti-Corruption Strategy by 2009”, the active participation of civil society in monitoring implementation, and regular assessments of impact and progress (EC, 2006). It also requires accession to the UN Convention against Corruption, the Council of Europe anti-corruption conventions, and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, as well as the implementation of specific reforms within law enforcement agencies.

Ultimately, while it is laudable that the Anti-Corruption Action Plan reflects a realistic approach to implementation, the “good governance” approach also means that key corruption problems are overlooked or underplayed. For example, the 2007 Plan fails to address favouritism within the civil service administration, one of the concerns highlighted in GRECO’s 2006 report. Also, in the absence of systematic analysis, it is difficult to draw a link between implementation of governance reform and impact on levels of corruption. The government’s emphasis on institutional change reflects a presumption that reforming systems and simplifying processes result in reduced corruption. Without non-anecdotal knowledge about how corruption actually plays out in the political, bureaucratic and private spheres, however, the effectiveness of such measures cannot be satisfactorily assessed.

### 3.6 Factors that facilitate or hinder implementation

Because the current Anti-Corruption Action Plan is a realistic document reflecting the government’s own priorities, it is likely that most of the measures will be implemented to one degree or another. Despite a sometimes arrogant approach to policy-making, the Georgian leadership is, by all accounts, still concerned about its reputation with international actors and the public in general. The elections scheduled for 2008 will encourage the government to put its best face forward.

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<sup>123</sup> Personal communication, Office of the Minister for Reforms Coordination, 24 May 2007.

However, what is meant by effective implementation remains open to question. As noted above, the lack of detailed indicators is a significant weakness of the current Action Plan document. In the past, this vagueness has resulted in superficial reporting on progress. For example, one action in the previous Action Plan document, to promote transparency in the privatisation process, was reported as “achieved” because relevant information was posted on the Ministry of Economic Development’s website. However, this website only lists assets which have been, or will be, privatised. No information about the bidding agreements, or justification for direct sales, is included. Another factor is financial: in the absence of budget allocations, it appears that expectations for implementation are set deliberately low. In the latest Action Plan, the establishment of a whistleblower protection system according to international standards may be considered “achieved” when the legislation has been submitted to Parliament for approval. The absence of strategic vision reinforces the superficial nature of reform, in the sense that the Action Plan may be modified at will each year. Therefore, it is perfectly plausible for certain measures to drop out of the Plan after only partial implementation.

#### Lack of information

The lack of regular and systematic information about trends in corrupt practices as well as the impact evaluations of ongoing reforms from an anti-corruption angle has a double negative impact. On the one hand, the government cannot measure progress or take appropriate corrective measures. On the other, it deprives external actors (civil society, development partners, media, etc.) of powerful advocacy instruments for holding the government accountable.

The information that does exist is often difficult to obtain. Despite a strong Freedom of Information Act (2000), delays in responding to requests are common, as a result of unwillingness and/or the incapacity of state agencies.<sup>124</sup> As one observer noted, “although all ministries have a point person in charge of responding to requests... if you don’t ask 100 times it just doesn’t work, especially in rural areas”.<sup>125</sup> While a few court victories have compelled state agencies to release information in specific cases, the transformation of attitude needed to make the law effective more generally has not yet occurred. Adding to the challenge is a climate of mistrust that exists between the state administration and civil society. This, perhaps more than the formal administrative obstacles, significantly hinders the effective flow of public information. TI-Georgia and other NGOs funded to monitor the reform process report difficulties in accessing relevant information.<sup>126</sup>

#### Weakness of oversight bodies

The weakness of major oversight bodies in Georgia means that there are few actual checks on executive actions with respect to the Action Plan. Parliament, as noted earlier, is considered too weak due to one-party rule to play a strong oversight role.<sup>127</sup> Nor are the courts independent enough to produce decisions that might challenge executive power. A 2004 law giving the President sole authority to appoint and dismiss common court judges has increased fears among judges of taking a decision that might displease the authorities (Esadze, 2006). Even the Chamber of Control – Georgia’s primary audit institution – is notoriously ineffective. Civil society and the media are

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<sup>124</sup> As part of the “FOI Implementation, Law Reform and Financial Transparency” project run by the Georgian Young Lawyers’ Association in 2005-2006, staff filed 710 FIA requests. In 220 cases the receiving agencies refused to answer, 369 answers were provided within 10 days as required by law, and 121 answers took longer (Chkheidze, 2007).

<sup>125</sup> Personal communication, OSCE, 31 May 2007.

<sup>126</sup> Personal communication, TI-Georgia, 23 May 2007.

<sup>127</sup> Personal communication, K. Kukava, 28 May 2007.

compromised by their closeness to the ruling elite, the unresponsiveness of government sources, and reduced levels of funding from development partners for in-depth monitoring and investigative reporting.

#### Low capacity within responsible ministries

It is important not to overlook the basic lack of corruption expertise within most of the ministries in Georgia. Without a background analysis of specific corruption risks within particular sectors and their impact on broader ministerial objectives, one cannot expect civil servants to link their day-to-day work with an explicit anti-corruption agenda. Currently, there is only one or perhaps a handful of people formally involved with the Anti-Corruption Action Plan in each ministry. Furthermore, cooperation between ministries in general – not just with respect to anti-corruption – is considered very weak.

As noted earlier, the Council of Europe is, together with the State Minister for Reforms Coordination, working to strengthen the Anti-Corruption Action Plan Implementation Group through technical support and to facilitate several specific measures within the Action Plan. Initial targets include implementing codes of conduct for the Prosecutor's Office and the Ministry of the Interior and improving the regulatory and legal framework for fighting corruption. However, this project does not anticipate long-term assistance to develop a meaningful anti-corruption agenda at the sectoral level within key ministries. Most ministries, therefore, will continue to view the Action Plan as a set of boxes to tick in advance of each reporting period.

## 4 Lessons learned

Sweeping interventions can dramatically reduce corruption in people's daily lives, even in the absence of a formal anti-corruption strategy....

In Georgia, determined leadership has suppressed substantial sources of petty corruption in a very short period of time. Ordinary citizens are no longer harassed by roadside police requesting bribes, qualified students earn university places, and the process for ordering a passport is public and reliable.

.... but they also divert attention from the need for deeper reforms

The creation of "islands of integrity" may be a good starting point, but the institutional basis for a sustained low level of corruption is still missing.<sup>128</sup> While the government still eagerly pursues corrupt bureaucrats and businessmen, it shows less enthusiasm for increasing transparency, strengthening accountability structures (outside the Prosecutor's Office), or consolidating the institutional basis to make improvements sustainable. This makes the long-term implementation of individual measures subject to the whims of political authorities. Plus, other patterns of corruption persist – for example in the upper reaches of the judiciary, procurement, party financing and privatisation processes – that threaten Georgia's political and economic development. These problems are inadequately addressed by either the Anti-Corruption Strategy or the government's broader good governance agenda. In the current political context, however, pro-government civil

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<sup>128</sup> In terms of tax, for example, new staff has been hired and the rules have been simplified but the amount citizens are asked to pay is often determined by discretion, and businesses report increasing harassment by the tax authorities.

society organisations, the media and even development partners allow the government to bask in the glory of early successes instead of challenging its (non) progress in other areas that pose a challenge to consolidated executive power.

Where governance reforms already address key aspects of corruption, the added value of a strategy is minimal in the absence of meaningful analysis and monitoring

Many officials and development partners in Georgia argue that focusing on “good governance” is more effective than concentrating on corruption *per se*. To the extent that the anti-corruption agenda to a large extent reflects reforms already underway, the realism of the government’s approach is refreshing. The risk, however, is that without an integrated analysis of the impact of governance reforms on corruption, important problems will remain unidentified and unaddressed. In Georgia, policy-making has generally proceeded without baseline knowledge about specific corruption challenges.

Although a national anti-corruption strategy can potentially provide some discipline to ad hoc interventions, the insistence by international actors on a stand-alone anti-corruption document has resulted in quick-fix, even superficial, measures taken simply to meet external demands. While immediate, visible actions – such as legislative changes – are important, the experience in Georgia and other countries underscores the need to institutionalise reforms through an ongoing process of analysis, implementation, monitoring and adjustment.

Monitoring creates incentives to develop stronger management capacities within agencies and to collect more and better data with which to design interventions. Robust monitoring, by both the government and external actors, depends on i) the availability of meaningful implementation indicators and ii) the production and dissemination of information relevant to the reform process. Furthermore, stakeholders must have the capacity to analyse the information provided to assess the impact of interventions.

The promise of European (NATO) integration is a significant but not sufficient incentive for long-term anti-corruption reform

Measures to tackle the root causes of corruption challenge powerful interests in all countries. In recent years, the prospect of European integration has been acknowledged as an important trigger for painful anti-corruption reforms in many transitional states. In Georgia, however, the prospects for EU membership are remote and neither the government nor its international partners identify anti-corruption as a “make or break” issue in their political dialogue. Occasionally expressed concerns are often addressed through legislative measures that have little practical impact. The Council of Europe, the European Commission and the Dutch Embassy are the only development partners explicitly supporting the Anti-Corruption Action Plan, and their contributions in this respect focus on only a few ministries. In the absence of either coordinated pressure by development partners or domestic critics, the executive can resist uncomfortable measures that threaten its own hold on power.

International partners undervalue the process of policy-making in their efforts to promote reform

The Georgia case study underscores the need for much greater emphasis on a good *process* of policy development as a prerequisite for effective implementation. In 2001, when GRECO published its first round evaluation report on Georgia, it recommended only that the authorities produce a strategy – with little guidance on how that might be accomplished, or key elements that

should be considered. The subsequent support provided by development partners focused on document drafting and legislative reform. As a result, ownership of the Action Plan by individual agencies is weak and its potential as a motor for real change is all but extinguished.

To decrease the possibility that written policies remain paper tigers, a number of factors can be considered from the beginning of the policy development process. Meaningful indicators of public integrity need to be established, along with a capacity – within the government or independent agencies – to produce and reproduce analytical work on corruption risks within sectors and specific activities. In addition, communication mechanisms within and among ministries, and between the administration and public, require dedicated resources. In Georgia, more nuanced information about corruption's causes, mechanisms and effects – particularly its economic costs – may help keep the problem on the public agenda. However, such information needs to be supplemented with regular reports on the administration's response to encourage a more constructive debate about ongoing challenges.

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Anti-corruption policy making in practice:

## Indonesia – A Country Case Study

Zora Ledergerber and Bivitri Susanti

**U4 REPORT 1:2007 PART 2B**



## Contents

<b>ACKNOWLEDGEMENTS.....</b>	<b>86</b>
<b>1 COUNTRY BACKGROUND.....</b>	<b>87</b>
1.1 RECENT POLITICAL LANDMARKS AND MAIN GOVERNANCE REFORMS .....	89
1.2 SCOPE OF CORRUPTION IN INDONESIA .....	90
1.3 HISTORY OF ANTI-CORRUPTION INITIATIVES AND INSTITUTIONAL FRAMEWORK .....	91
1.4 MAIN PLAYERS .....	94
<b>2 THE FACTS OF ANTI-CORRUPTION POLICY MAKING .....</b>	<b>96</b>
2.1 ORIGIN AND RATIONALE OF MAJOR ANTI-CORRUPTION INITIATIVES .....	97
2.2 DESIGN OF THE NATIONAL ACTION PLAN ON CORRUPTION ERADICATION .....	97
2.3 PROVISIONS FOR IMPLEMENTATION.....	100
2.4 SUPPORT OF DEVELOPMENT PARTNERS FOR RAN-PK .....	101
<b>3 ANALYSIS .....</b>	<b>102</b>
3.1 CONTEXTUAL FACTORS THAT FAVOURED OR IMPEDED ANTI-CORRUPTION POLICY MAKING.....	102
3.2 MAIN DRIVERS AND OPPONENTS OF CHANGE.....	103
3.3 RATIONALE AND POLITICAL UNDERPINNING FOR THE CHOICE OF POLICY OPTION.....	105
3.4 ROLE OF DEVELOPMENT PARTNERS .....	105
3.5 INTERPLAY WITH RELATED GOVERNANCE REFORMS AND ASSOCIATED ACTORS .....	106
3.6 FACTORS THAT FACILITATE OR HINDER IMPLEMENTATION.....	107
<b>4 LESSONS LEARNED.....</b>	<b>108</b>
<b>5 BIBLIOGRAPHY.....</b>	<b>111</b>

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This case study is part of a broader research project of the U4 Anti-Corruption Resource Centre called “Anti-corruption policy making in practice – what can we learn from national anti-corruption policy frameworks for the implementation of Article 5 of UNCAC?” The main objective of the project is to provide insight, based on investigations in six countries, on how and why anti-corruption policy frameworks are designed, what the driving forces are, factors that promote or impede implementation, and what the role of development partners is in the overall process. Its findings will contribute to the ongoing debate on how to implement Article 5 of the United Nations Convention against Corruption (UNCAC).

The country case study on Indonesia focuses specifically on the National Action Plan against Corruption (Ran-PK) as the expression of the government’s efforts to introduce a comprehensive anti-corruption policy framework with a strong focus on prevention. Since Ran-PK is of relatively recent date (2005), the case study also explores prior initiatives that feed into this plan.

The case study was produced on the basis of qualitative interviews with a broad range of key interviewees in each country and a literature review, including key policy and reform documents as well as political analysis. The authors would like to thank Kevin Evans (BRR-SAK) and Sofie Schütte (KPK) for their insightful comments on earlier drafts of this study, in addition to all those who have generously provided their expert knowledge, political insights and time to contribute to this undertaking in Indonesia. We sincerely hope that the content will be useful for further anti-corruption initiatives in Indonesia as well as in other countries struggling with similar corruption challenges.

# 1 Country background

The Republic of Indonesia came into existence in 1945, after a long period of Dutch colonial rule and Japanese wartime occupation. Indonesia's founding fathers established a centralised form of government (or unitary state) in order to unite a people of many different ethnic, religious and cultural backgrounds spread across thousands of islands. In the 30 years of the dictatorial regime of former President Soeharto (1968 – 1998), which is widely referred to as the “New Order era”,<sup>129</sup> he greatly expanded and centralised the resources of the Indonesian state apparatus while personalising the controlling structures, instituting press censorship and violating human rights. Political competition was severely circumscribed, with the “Government Party” Golkar assured of easy victory through the muzzling of discourse in the public domain and through a variety of both subtle and not-so-subtle measures designed to sustain support for Golkar.<sup>130</sup>

Moreover, from the end of the 1960s the long established civilian rule of the state was subverted through the appointment of numerous active military personnel to political, including parliamentary, and senior civilian bureaucratic positions. The militarisation of the state was further institutionalised through active discouragement of diversity of opinion and the effective “depoliticisation” of the public domain. So successful was this process that when the number of seconded military officers began to be reduced in the late 1980s there was no effective demilitarisation of the state. Only in 1998 did President Soeharto's successor, President Habibie, encourage a multiparty system and focus on electoral reform, democratisation and decentralisation.

During the New Order regime, Parliament and the People's Consultative Assembly (MPR) were fully beholden to the President and served as a rubber stamp for presidential rule.<sup>131</sup> After the fall of the New Order the pendulum swung the other way, Parliament discovered its long neglected power and the MPR became the highest regulatory instrument. In 2001, the MPR even went so far as to unseat the first freely elected president, Abdurrahman Wahid, over non-performance and improper use of aid.<sup>132</sup>

President Soeharto passed a number of reforms meant to establish Indonesia as a centre of foreign investment, which were widely credited with having alleviated extreme poverty in Indonesia.<sup>133</sup> While generally assumed to represent an example of export-led growth, Indonesia's economic

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<sup>129</sup> The “New Order” (Indonesian: Orde Baru) is the term coined by former Indonesian President Soeharto to characterise his regime as he came to power in 1966. In more recent times the term has become synonymous with the Soeharto years, and has been used pejoratively since the Indonesian 1998 reform movement.

<sup>130</sup> Some of these measures included mandating public servants to vote and promote support for Golkar. Others included an absence of controls to prevent multiple voting, aggressive discouragement of electoral monitoring, and continuous intervention by senior government figures in the two other parties permitted to participate in elections, which ensured they remained destabilised, internally divided and essentially “unelectable”.

<sup>131</sup> The 1945 Constitution, in its original form, provides for a fundamentally weak presidency as the National Assembly, MPR, could appoint and dismiss the President. Ironically, given the constitutional weakness of the presidency, the answer of the executive was to emasculate the electorate by replacing competitive electoral politics with presidential discretion. In the case of the late Sukarno Presidency from 1959-1965, the answer was simply to dismiss the elected Parliament and replace it with agreeable appointees. President Soeharto used sham elections with restricted participation to ensure that he was politically secure and routinely re-elected without opposition.

<sup>132</sup> Indeed every president except President Megawati was dismissed by the MPR with President Soeharto avoiding dismissal by resigning following calls by the MPR Speakership for his resignation.

<sup>133</sup> [www.pbs.org/wgbh/commandingheights/lo/countries/id/id\\_overview.html](http://www.pbs.org/wgbh/commandingheights/lo/countries/id/id_overview.html)

policy orientation changed sharply several times between 1967 and 1998.<sup>134</sup> Overall, however, Indonesia experienced unprecedented growth, but corruption flourished as members of the military and the Golkar party were heavily involved as intermediaries between businesses (foreign and domestic) and the Indonesian government. Funds from these practices were often directed to foundations controlled by the Soeharto family.

When in 1997 Indonesia was hit hardest by the Asian financial crisis,<sup>135</sup> it turned out that Soeharto's apparently solidly built economy was nothing but a house of cards, and that corruption and nepotism made Indonesia particularly susceptible to the Asian financial crisis. The absence of credible, trusted and transparent institutions led to a catastrophic collapse of confidence and a massive flight of capital that continued for years after the initial crisis. This, combined with increasing public anger at pervasive corruption and favouritism, reflected, for example, in massive (student) protests, led ultimately to President Soeharto's resignation in 1998.

Indonesia's economy has since made a solid recovery and its transition to democratic governance and decentralisation continues with current President Yudhoyono making important reforms on several fronts. The parliamentary elections in the first half of 2004 also proved that basic democratic institutions are taking root. However, Indonesia is still far from having a fully developed democracy. Accountability continues to be weak and corruption has been hard to combat. Decentralisation has faced many obstacles and public service remains poor.

Following a series of profound constitutional reforms, Indonesia's political system today is a presidential system with two chambers of Parliament: the House of Representatives (DPR) and the Regional Representatives Council (DPD). Following the constitutional amendments of 2002, these two chambers of Parliament with elected officials substitute the former MPR. Laws and budgets are passed by agreement between the President and DPR, while government regulations are promulgated by the President without DPR approval. These changes more firmly established checks and balances in the structure of the Indonesian state and also shifted power formally to the executive, particularly in the field of policy formulation. The recent change to direct election of the president has clarified that the accountability of the president is to the people and not to the Parliament. Moreover, according to the fourth amendment to the Constitution, the President can now only be impeached on the basis of a breach of the Constitution (ADB, 2004).

The president of Indonesia is the Head of State, Head of Government and Commander-in-Chief of the Indonesian Armed Forces. The president has constitutional authority over the government and has the power to name and remove ministers. Shortly after assuming office, President Yudhoyono and the legislature elaborated a Long-Term Development Plan which sets the political priorities for the next 25 years. The Long-Term Plan is in turn translated into a Mid-Term Development Plan formulated by the president according to her/his vision for her/his five-year term of office.

The House of Representatives (DPR) is the main legislative body, in that laws and the state budget are passed together with the president. It oversees the activities of the executive, and its 550

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<sup>134</sup> These several eras might be classified as follows: 1967-1973 (radical micro-economic liberalisation), 1974-1978 (capital-intensive import-replacing industrialisation), 1979-1984 (public investment in rural and human resource development), 1984-1991 (tax reform, deregulation and export promotion), 1992-1997 (domestic service sector and patron-based market preferences). Genuine concern for export orientation and economic efficiency was best seen in the 1967-1973 and 1984-1992 periods. At other times domestic market access and protection provided the key drivers for policy direction. The sudden shifts in policy direction were driven less by ideological proclivities than by changing, often external conditions, to which successive Soeharto Cabinets adapted usually quite quickly.

<sup>135</sup> When the situation began to stabilise in the third quarter of 1998, Indonesian equities were worth a mere 9% of their pre-crisis real (USD) value as opposed to Malaysia, Thailand, South Korea and the Philippines where valuations remained about 24% or in Singapore where they were still 38% (Evans, 1998).

members are elected every five years through general elections.<sup>136</sup> The 128 members of the DPD have no influence on the legislative process except in providing recommendations to the DPR.

As of October 2007, there are 33 provinces and 465 counties and cities in Indonesia. Since the end of the Soeharto era, one of the key areas of reform has been decentralisation, as the public and regional authorities have pressed the Indonesian government for a less centralised system. The concept of regional autonomy has been offered as a way of decentralising power while retaining a commitment to a unitary state. Today, each province has its own political legislature and governor as do the counties and cities. The latter have become the key administrative units and are responsible for providing most government services, except for issues in relation to foreign policy, defence, security, judicial affairs, national monetary and fiscal policy, and religious affairs. The village administration level is the most immediate in terms of citizens' daily life and handles village or neighbourhood matters through an elected village chief.

When it comes to the judicial system, the Supreme Court is the country's highest court. Placed under the Supreme Court are the Court for General Jurisdiction, the Religious Court (for Islamic Family Law), the Military Court and the State Administrative Court. Additionally, the Commercial Court rules on bankruptcy and insolvency cases. Civil disputes as well as criminal and administrative law cases are heard in the District Court, whereas appeals are heard in the High Court at the provincial level. The latest additions to the Indonesian judicial system include the Anti-Corruption Court, the introduction of which had become necessary due to the high level of corruption in the judicial institutions. In recent years, important action has been taken to affirm and strengthen the independence of the judiciary through the creation of a Constitutional Court. While now demonstrably independent of executive and even parliamentary interference, the judicial system remains highly corrupted, suggesting that it is not independent in the face of financial subversion. Indeed, the introduction through constitutional reform of a Judicial Commission which reviews nominations to the Supreme Court and deals with the issue of judicial ethics reflects the damage done to the reputation of a judiciary whose integrity systems are not able to withstand subversion by financial incentives.

## 1.1 Recent political landmarks and main governance reforms

One of Indonesia's most important recent political landmarks was the fall of former President Soeharto in 1998. Following his resignation, Indonesian political and governmental structures have undergone major reforms, known as the *Reformasi*. Four amendments to the 1945 Constitution have revamped the executive, judicial and legislative branches and incorporated the concept of a balance of powers. The Reformasi era has also been characterised by greater freedom of speech, in marked contrast to the censorship, including the more insidious self-censorship, of the New Order era. In the political sphere this has led to a more open political debate in the deregulated news media, as well as a flourishing civil society. It has also led to a strengthening of (decentralised) democratic processes, including a regional autonomy programme, and the first direct presidential election in 2004 and the subsequent direct election of local government leaders. However, the former political, administrative and business elites continue to seek influence and to reconsolidate their position in the new system through informal networks. Only the influence and role of the armed forces (TNI) have been diminished, by abolishing its official representation in Parliament. Military domination of regional administration is also gradually breaking down, with new regulations prohibiting active-duty officers from holding political office (Davidson et al., 2006).

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<sup>136</sup> Of some symbolic historical note is the fact that the elections of 2004 represented the first time in Indonesian history in which every MP was directly elected.

Since 1998 and during four different presidencies, Indonesia has seen many governance reforms or attempts at governance reform. Similar to other countries in transition and in line with the broad thrust of the Reformasi movement, Indonesia has targeted specific areas such as the reform of the Constitution, electoral and wider political reform, affirmation of basic civic rights, public expenditure reforms and decentralisation. Next to the creation or strengthening of institutions crucial to a democratic state such as the independent Election Commission, the Constitutional Court, and the Judicial Commission, the independence of the Central Bank and the Supreme Audit Institution (BPK) has been strengthened and a blueprint for judicial reform developed. In addition, Indonesia has progressed in improving the legal and regulatory framework in selected areas, providing a greater role and voice to regional governments in the delivery of services and in developing a framework for fiscal and public expenditure management (ADB, 2004).

The relative stability of the economic and security situation since the 2004 elections has been matched by a stable ruling coalition within the DPR. Ultimately, the capacity to rule in Indonesia today still depends on the support of long-established interests, which do not easily accept meaningful reform.

## 1.2 Scope of corruption in Indonesia

There is wide and intense debate within Indonesia as to the level of corruption in the country and whether it is increasing or decreasing. According to a poll referred to by the World Bank, the majority of households find that the level of bribes has remained more or less the same since decentralisation, while the delivery of services has improved slightly. Some observers point to the enhanced degree of transparency following the introduction of democracy, and consequently the higher number of revelations about corruption, as an explanation for the perception of an increased level of corruption. Democratisation and decentralisation have certainly led to a reduction in blatant "palace corruption" and have decreased the government's mingling with the private sector, which was flagrant under former President Soeharto and his cronies. On the other hand, several reports indicate that this has not resulted in an actual decrease of the level of corruption but that corruption has simply been decentralised in parallel with decentralisation at the political and administrative level (see for example Davidson et al., 2006).

As a matter of fact, in the course of the decentralisation process and a year after regional autonomy entered into force in 2001, a wave of corruption cases swept across Indonesia's newly empowered regional parliaments. Decentralisation opened new avenues for corruption to the local elite, which may earlier have had difficulty getting their "fair share of the cake" in a tightly centralised Indonesia. Virtually all regions saw allegations of corruption emerge, and more recently still, the trend spread from regional legislatures into the executive. In 2006, there were 265 corruption cases involving local legislative bodies with almost 1,000 suspects handled by prosecutors' offices across Indonesia. In the same year, the same offices had 46 corruption cases implicating 61 provincial governors or district heads. The disclosure of corruption cases on this scale is an unprecedented phenomenon in Indonesia (Davidson et al., 2006).

It can be said that corruption in Indonesia is systemic, deeply rooted and ranges from petty to very high-level corruption. According to a public perception survey conducted by Transparency International (TI) Indonesia, the judiciary is among the most corrupt state institutions in the country, together with Parliament, the police and the public prosecutors.<sup>137</sup> The saying goes: "If your rooster has been stolen, do not file a report with the police, you would only lose your goat too". Also according to TI, Indonesia is home to the most corrupt politician ever. It is estimated that

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<sup>137</sup> [www.ti.or.id/banner/go/52/](http://www.ti.or.id/banner/go/52/) (cited 10 March 2007). The complete list is in Indonesian language.

Indonesia's former President Soeharto and his cronies looted between 15 and 35 billion USD of state funds.<sup>138</sup> In July 2007, a civil case against the former President was started, with state prosecutors seeking restitution and damages worth a total USD 1.5 billion. Previous efforts to trace President Soeharto's assets outside the country have had no success, officially due to lack of evidence. Other members of the Soeharto family have not enjoyed such immunity from prosecution. His third son Tommy Mandala Putra was sentenced to 15 years' jail in 2002 for ordering the assassination of a judge who had sentenced him in a corruption case. But that jail sentence was later reduced by the Supreme Court to ten years and Tommy Mandala Putra was released after only five years.<sup>139</sup>

Many businesses and foundations in Indonesia are owned or controlled by the military, and the practice of permitting enterprises to be run by the military and the police is a serious problem, leading to allegations of involvement in drug smuggling, protection and prostitution rackets.<sup>140</sup> Increased transparency regarding the military's budget will occur only gradually, but at least this former centre of power has lost its formal place in government, including its seats in the People's Consultative Assembly. In the last days of the Megawati administration, the DPR passed the Armed Forces Act (2004), which mandated the government to take over all military businesses within five years (World Bank, 2003).

### 1.3 History of anti-corruption initiatives and institutional framework

Although a number of anti-corruption initiatives had existed prior to the fall of Soeharto in 1998, they were not effective as his regime had little incentive to fight corruption, since, for example, the existing corrupted system was still able to sustain political stability by producing an acceptable 7% economic growth a year. The Habibie (1998-1999), Wahid (1999-2001) and Megawati (2001-2004) governments, along with the *Reformasi*-era House of Representatives (DPR), recognised the need to address corruption and consequently between 1998 and 2004 a spate of new anti-corruption laws and decrees were enacted and anti-corruption initiatives launched. During this time, state initiatives to counter corruption came mostly from the legislature (Schütte, 2007).

An initiative under the Habibie administration in the first flush of enthusiasm to advance *Reformasi* was the establishment of the *Assets Auditing Commission* (KPKPN) in 1999. This was mandated to carry out audits of the wealth of state officials in the legislature, executive, judiciary, state enterprises and regional business bodies (Sherlock, 2002). A presidential decree by President Wahid created a *National Ombudsman Commission* (KON) in 2000. In the same year, at the initiative of the Attorney General, the *Joint Team for the Eradication of Corruption* (KPK's unsuccessful forerunner organisation) was also created, but soon again dissolved following a controversial Supreme Court decision. The momentum of anti-corruption actions, however, came to a halt by the beginning of 2001, when President Wahid became embroiled in efforts to survive the campaign by members of the legislature to unseat him for his alleged involvement in the improper use of aid money, alongside the general (partisan) concern about underperformance.<sup>141</sup> The momentum was not regained until after President Megawati's accession to power in July 2001.

President Megawati made a number of statements committing her government to combating corruption, but they remained at the level of general promises and exhortations to the nation to

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<sup>138</sup> Transparency International Press Release, 25 March 2004.

<sup>139</sup> The Straits Times, Singapore, 28 September 2007.

<sup>140</sup> Following their formal separation, it also led to open conflicts between the police and the military when their businesses clashed (World Bank, 2003).

<sup>141</sup> President Wahid was impeached in 2001 by the MPR due to his involvement in the improper use of aid.

abstain from corrupt activities (Sherlock, 2002). In April 2002, triggered by massive pressure from the international community,<sup>142</sup> the DPR passed the Anti-Money Laundering Law which stipulates the establishment of a Financial Intelligence Unit, the *Centre for Financial Transaction Reporting and Analysis* (PPATK). In 2003, still under President Megawati (albeit not due to her initiative), the DPR created the *Corruption Eradication Commission* (KPK). Amongst the different anti-corruption bodies established since the Soeharto regime, KPK is arguably the most active in Indonesia at present. KPK is an independent body vested with investigative and prosecutorial powers as well as a mandate to implement preventive measures. However, at the moment the emphasis of KPK is more focused on investigation and prosecution. The same law by which KPK was established also provided for the introduction of a special *Anti-Corruption Court* to hear cases brought by KPK, given that the justice system itself was so beset with corruption (Anti-Corruption Court Blueprint, 2004). Within the first two years of the court's existence, 24 cases had been brought before it by KPK (Schütte, 2007).

Despite these efforts, no post-Soeharto government prior to Yudhoyono succeeded in convincing the Indonesian people of its seriousness about attacking what is commonly known in Indonesia as KKN: corruption, collusion and nepotism (Davidson et al., 2006). Anti-corruption efforts during the post-Soeharto period were too often a story of considerable promise and creative initiatives dissipated through poor follow-up and weak implementation. But in September 2004, President Yudhoyono was elected in large part because of his promises during his election campaign to improve governance and to fight corruption. Since taking office, he has been outspoken about the need to reduce corruption and his government has launched a number of initiatives in support of this goal.

The principal official expressions of the Yudhoyono government's anti-corruption objectives and approaches are *Inpres 5 of 2004* (the Presidential Instruction) and the *National Action Plan* called *Ran-PK* (Davidson et al., 2006). *Inpres 5* assigns the head of *Bappenas*, the National Planning Agency, to prepare and coordinate the *Ran-PK* for 2004-2009, while *MenPAN*, the Minister of State Administration, is made responsible for coordinating, monitoring and evaluating *Ran-PL* implementation. To enhance the country's success in tracing assets looted through corrupt activities, President Yudhoyono further set up the *Hunting Team* in 2004, which consists of representatives of the Attorney General's Office (AGO), the Police, the Ministry of Foreign Affairs, the Ministry of Law and Human Rights, the State Intelligence Body and the Strategic Intelligence Body. An additional body, *Timtas Tipikor*, the *Coordinating Team for the Eradication of Corruption*, was established under presidential instruction in 2005 in order to coordinate the relevant state institutions involved in investigating corruption cases. The team had a temporary mandate and was dissolved in May 2007. The unfinished cases were supposed to be sent to the relevant institutions, such as AGO or KPK. Additionally, based on Law 21/2004, President Yudhoyono established the *Judicial Commission*, which reviews nominations to the Supreme Court and deals with the issue of judicial ethics. Unfortunately, the supervisory function of the Commission over the Supreme Court has been cut off by a Constitutional Court ruling in 2006, and the Commission itself has recently become the target of corruption investigations by the KPK with one of its commissioners being arrested for accepting bribes, thus further weakening its authority.

The current Indonesian government has also actively used the UN Convention against Corruption (UNCAC) as a basis and catalyst for anti-corruption efforts. After ratifying the Convention in 2006, KPK commissioned a gap analysis in order to compare national legislation with the UNCAC provisions (Gap Analysis, 2006).<sup>143</sup> Beyond the gap analysis, several additional initiatives in

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<sup>142</sup> Indonesia had been blacklisted by the Financial Action Task Force, amongst others, due to its lack of a functioning Financial Intelligence Unit.

<sup>143</sup> Technical and financial support was provided by Partnership for Governance, the EU and GTZ.

connection with UNCAC implementation have been undertaken. In one, the Indonesian government appointed a special team coordinated by Bappenas which was tasked with translating UNCAC into national law. The government also mandated a different team to amend the Indonesian Anti-Corruption Law in order to comply with UNCAC provisions. The efforts of this team are coordinated by the Ministry of Law and Human Rights (Gap Analysis, 2006).<sup>144</sup> Furthermore, Indonesia has committed to hosting the second UNCAC Conference of State Parties in early 2008 and is holding a number of preparatory capacity-building events and policy forums in the run-up to this conference.

Just recently, the Finance Minister introduced a tentative programme of civil service reform. Reforms launched in July 2007 aim at improving almost 6,500 public service procedures performed by the ministry by the end of 2008, prioritising the reform of tax and customs services.<sup>145</sup> The salaries of public officials have been raised to reduce incentives for corruption and performance-related pay structures have been introduced. While similar efforts had been adopted earlier when establishing the KPK as a pillar of integrity, it is unclear whether this recent reform effort is part of a systematic and legally binding reform programme or driven by the Ministry of Finance alone. Although so far comprehensive civil service reform has been largely neglected by the government, in September the State Minister for Administrative Reforms (MenPAN) announced a plan for civil service reform in 2008. This includes performance-related reforms along with a greater focus on supervision and accountability. Nevertheless, “[a] member of the DPR, who formerly held ministerial positions for both regional autonomy and administrative reforms, warned that the government’s proposals were overly complex, would take years to implement and would run counter to laws on decentralisation. He called instead for a focus on simple, tangible programmes that deliver immediate results.”<sup>146</sup>

In relation to the legal framework for addressing corruption, the principal anti-corruption laws are the law on a corruption-free state administration (1999) and on the eradication of corruption (1999 and 2003); on monopolies and unfair trade actions (1999); on the establishment of KPK and the Anti-Corruption Court (2002); on money laundering and the establishment of PPATK (2003); and on witness and victim protection (2006) (Davidson et al., 2006). Currently, an Administrative Procedure Act is being drafted, which once passed by Parliament will increase the liability of the public administration. However, the existing legal anti-corruption framework still has weaknesses and room for improvement, for example by introducing legal protection for persons reporting corruption (whistleblowers), by finally passing the draft freedom of information bill pending in Parliament since 2002, as well as by passing the national procurement law. Furthermore, KPK is not allowed to hire its own investigators and prosecutors and does not have enough flexibility in starting its own investigations. In addition, the existing tax law still requires clarification and the Judicial Commission and the National Ombudsman are not sufficiently empowered (Davidson et al., 2006).

An additional difficulty in relation to the legal framework is that in Indonesia, in order to take effect the laws often require implementing regulations in form of government regulations or presidential decrees (ADB, 2004). The impact of laws is thus not clearly felt until further legislation or regulations are fully prepared, which is often undertaken by public officials who are normally less publicly transparent and accountable and who often pursue their own or their institution’s particular agenda. In addition, laws are sometimes incoherent and contradictory, which leads to legal uncertainty and which in some cases has been used against the anti-corruption institutions.

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<sup>144</sup> Support is provided by the French Government.

<sup>145</sup> E.g. all staff (about 1000 employees) of the Jakarta port have been transferred and replaced, a measure that is linked to a high incidence of corruption.

<sup>146</sup> Economist Intelligence Unit, Country Report Indonesia, November 2007, [www.eiu.com/index.asp?layout=displayIssueArticle&issue\\_id=1852770770&article\\_id=632770848&rf=0](http://www.eiu.com/index.asp?layout=displayIssueArticle&issue_id=1852770770&article_id=632770848&rf=0)

## 1.4 Main players

### Parliament and political parties

Politicians in Indonesia are generally perceived as obstacles to the fight against corruption; a former Attorney General was once quoted saying that politicians in the DPR often interfered with individual corruption cases in the formal hearings instead of overseeing the general policies of the AGO. The strongest factions in Parliament are the long-established Golkar party, of which the current Vice-President is the Chair, and the PDIP, a party whose key leaders have political roots that go back decades. The Democrat Party of President Yudhoyono only occupies 57 out of 550 seats. Certain parliamentary commissions, for example those that deal with finance and development, are widely regarded as being particularly lucrative. Aside from self-enrichment, there is a standard view that MPs need to recoup their election expenses because winning a seat in Parliament is a costly matter, and to contribute to party coffers and finance their political/patronage networks.

### State administration:

Civil servants are another weak link in the chain of public accountability. It is common knowledge that new public officials often end in "debt traps", as they must pay large illegal fees in order to enter the civil service. Following the initial entrance fees there is extensive job farming in terms of promotion and placement during their careers. This encourages them to abuse their position by demanding and accepting bribes in order to repay their debt. An extraordinarily opaque system of remuneration in which the official salary represents only a fraction of the full civil servant income encourages a wide range of unhealthy bureaucratic practices that lead to parallel systems of loyalty along personalised rather than professional bureaucratic lines. While the final full rate of income taken home by civil servants may differ modestly from comparable private sector positions, this severe degradation of the integrity of the remuneration system creates major integrity traps for staff by blurring the lines between legal income and unethical to illegal income. However, in the last two years, due to institutional reform in the government institutions changes have been taking place and some ministries, such as the Ministry of Foreign Affairs, the Central Bank, the Attorney General's Office and the Ministry of Finance, have professionalised their recruitment system (World Bank, 2003).

### Armed forces

It has long been argued that as the public sector generally lacks funds the police and military have traditionally been able to compensate for this budget gap by running various legal (and illegal) businesses. The lack of funding combined with the toleration of "alternative" sources of funding are a central problem of corruption in Indonesia's military. Recent significant increases in budget allocations for the armed forces suggest that there may now be a historic reversal of this need to revert to "self-financing". Law 34 of 2004 provides for the regularisation of the commercial activities of the armed forces by 2009. In general, the armed forces seem to have accepted the democratic reforms and have not interfered in the political process, at least in recent years. Nonetheless, members of the armed forces have been very successful in thwarting attempts by citizen and other groups to prosecute "cases" of human rights abuse against armed forces personnel (past and present). It is also interesting to note that the agency mandated to manage the regularisation of military businesses, which must finish its work by 2009, has not yet been established. This suggests that the tone of the relationship between the civilian and military elites might be best summarised as "if you don't disturb us we will not disturb you" (Davidson et al., 2006).

## The Corruption Eradication Commission (KPK) and Anti-Corruption Court

KPK is widely regarded as the most active anti-corruption player in Indonesia to date. KPK enjoys high public respect and trust. Nonetheless, there have been concerns that KPK is still not effective enough and that it is only investigating cases that do not involve “big fish”. Also, coordination with other key government institutions that play a role in combating corruption could be improved, although there is a growing network of collaborative arrangements for the prosecution of corruption that exist between the KPK, KPPU, PPATK, BPKP and the Office of the Attorney General. Corruption cases investigated by KPK go to a Special Court on Anti-Corruption. A recent decision by the Constitutional Court rules that the wide autonomy from the Supreme Court which the Anti-Corruption Court enjoys will need to be revised as part of the current revision to the anti-corruption law, while indeed its success and credibility was often seen as related directly to its distance from the Supreme Court (Interviews, June 2007).

## Civil society

Since the fall of President Soeharto, non-governmental organisations (NGOs) have been mushrooming generally and in the anti-corruption sector in particular. There are several anti-corruption organisations, such as Indonesia Corruption Watch, Transparency International Indonesia and the Indonesian Society for Transparency, in addition to think tanks such as the Centre for Indonesian Law and Policy Studies. There are also numerous “watch” type organisations active down to the county and city levels right across the archipelago. Indonesian civil society is known to be active and has enjoyed a relatively high degree of freedom since the start of Reformasi (Interviews, June 2007). Since mid-2003, religious organisations have become increasingly involved in what has been called a “moral struggle” against corruption. The Education Research and Development Institute has developed religious curricula that incorporate anti-corruption material at university level, and has encouraged inter-religious cooperation in the fight against corruption. Additionally, an initiative that drew much public attention during the 2004 presidential campaign was the so-called Anti-Rotten Politicians Movement, a coalition against the (re)election of corrupt or otherwise tainted politicians (Schütte, 2007). Civil society (including the media) has managed to achieve public outrage at the spectre of corruption. There can be no doubt that the Indonesian population is now even more intolerant of corruption and collusion, although less perhaps insofar nepotism is concerned.

## Private sector

The business community is commonly seen as a group that has benefited greatly from the corrupt system, and private sector representatives have been complaining that the introduction of anti-corruption initiatives has hampered their business, as state-owned banks are more careful in giving loans now (Interviews, June 2007). Some are wary or cynical about the anti-corruption agenda and others complain about the inefficiency of doing business in Indonesia due to corrupt practices. Overall, private sector associations have been slow in taking up anti-corruption initiatives, although there seems now to be wider recognition in Indonesia that corporate governance practices promote business ethics and enhance the accountability of managers and boards of public companies (World Bank, 2003). There are different private sector associations in Indonesia, the most central being the National Chamber of Commerce and Industry (Kadin), which is becoming more active in the fight against corruption. In order to prevent unfair business practices, the Commission for Business Competition Supervision (KPPU) was established in 1999 in part to take legal action against collusion as well as many other unfair business practices (Davidson et al., 2006).

## Media

In the final months of the Soeharto presidency the media found its voice and has since continued to oppose any attempts to control it by state power. Since then, the press has been relatively free and shows a high degree of activism when it comes to reporting corruption cases.<sup>147</sup> Some say that the media has even become a major champion in the fight against corruption.<sup>148</sup> However, there is a difference between reporting and actually uncovering cases, and the latter is rarely the case. While the key Jakarta-based newspapers have led the fight, their influence is limited compared to television and radio. Radio is doing better as entry costs are low, but ownership of television is dominated by the old establishment, and although it contributes to a lively media, there are limits to where it will go. Furthermore, exposure of corruption cases in the media does not appear to guarantee any follow-up action by the police or the Attorney General (World Bank, 2003). Moreover, accessing information from the government can be difficult and the necessary legislation, procedures and practices for accessing information are not yet in place. Bribing of journalists, known as “Envelope Journalism”, still occurs among the numerous print and electronic media in Indonesia.

## Development partners

The role of the development partners (DP) in Indonesia is not very influential, especially since Indonesia graduated from the International Monetary Fund (IMF) programme in 2006. As a consequence, the Consultative Group on Indonesia (CGI), a regular high-level development partner meeting on various issues, including anti-corruption, was terminated in early 2007.<sup>149</sup> As such, Indonesia has a relatively high level of freedom in making its own policy decisions. In addition, both development spending and poverty have returned to pre-crisis levels, and the country has an additional USD 15 billion to spend on development in 2007 as a result of reducing fuel price subsidies and prudent fiscal management.<sup>150</sup> Prior to the CGI closure, the seven main development partners in order of financial significance were the World Bank, the Asian Development Bank and Japan, which represent the vast bulk of this support together with the United States, Germany, the Netherlands and Australia.<sup>151</sup> The organisation Partnership for Governance Reform (abbreviated “Partnership”) in Indonesia<sup>152</sup> was originally set up to provide a space for the Indonesian government, civil society and private sector representatives to engage on governance reform issues, and to act as a coordination unit between development partners on the same issues. Although Partnership played a catalytic role in coordinating early support for KPK, it has since lost its donor coordination function (see section 3.4).

## 2 The facts of anti-corruption policy making

This study focuses specifically on the above-mentioned Ran-PK as the expression of the government’s efforts to establish an explicit and comprehensive national anti-corruption policy

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<sup>147</sup> Despite this increased degree of freedom, Indonesia still ranks 103rd in the *Reporters without Borders* Press Freedom Index 2006. Freedom House cites political pressure on journalists as a problem for media freedom.

<sup>148</sup> Business Anti-Corruption Portal, Indonesia country profile, [www.business-anti-corruption.com/normal.asp?pageid=226](http://www.business-anti-corruption.com/normal.asp?pageid=226)

<sup>149</sup> [www.antara.co.id/en/arc/2007/1/24/ri-to-cess-seeking-financial-aid-through-cgi/](http://www.antara.co.id/en/arc/2007/1/24/ri-to-cess-seeking-financial-aid-through-cgi/)

<sup>150</sup> World Bank country brief Indonesia, [www.worldbank.org](http://www.worldbank.org)

<sup>151</sup> Cf. [www.minbuza.nl](http://www.minbuza.nl)

<sup>152</sup> [www.kemitraan.or.id](http://www.kemitraan.or.id)

framework. Ran-PK is intended “as an umbrella in designing corruption eradication programs and to adapt various national efforts to eradicate corruption in Indonesia” (Ran-PK, 2005). For this reason, Ran-PK is among the many anti-corruption initiatives that are particularly relevant for this study, which feeds into a global research project on national anti-corruption policy frameworks and their relevance for Article 5 of UNCAC. However, since Ran-PK is of relatively recent date (2005), the case study, to the extent possible, also looks at and touches upon prior and present initiatives that feed into this plan.

## 2.1 Origin and rationale of major anti-corruption initiatives

After the Asian Financial Crisis and the resignation of President Soeharto, the key problems confronting the nation were seen as being linked to the issue of governance. The prime target of the ensuing Reformasi was therefore to improve governance in Indonesia. Ending corruption, along with boosting democratisation, became central elements of the Reformasi agenda of every post-Soeharto government (Davidson et al., 2006). But since the main driving forces behind President Soeharto’s resignation were the Indonesian people, the actual driving force behind the post-Soeharto anti-corruption endeavours must be attributed to Indonesian citizens. An additional sign of the power of the street movements is the fact that former President Wahid was dismissed<sup>153</sup> by the People’s Consultative Assembly (MPR) for being involved in two corruption cases (and for being incompetent) as a reaction to massive street protests calling for his removal from office.<sup>154</sup>

The general rationale of most of the anti-corruption efforts since the fall of President Soeharto has been to restore the faith of the public and of international investors by tending to the sense of justice of the “common” people and by trying to catch the big fish and punish them for their corrupt deeds. Until recently, the Indonesian approach to combating corruption has therefore been to activate and implement an integrated criminal justice system; and consequently the emphasis has been on repression and criminalisation. The Yudhoyono government was the first to introduce an overall anti-corruption strategy (Ran-PK, see below) for the Indonesian national public administration with a strong focus on prevention, and valid for all government units at the national and local levels.

## 2.2 Design of the National Action Plan on Corruption Eradication

### Process and stakeholder involvement

On the first international Anti-Corruption Day, 9 December 2004, President Yudhoyono issued a Presidential Decree on the Acceleration of Corruption Eradication, also called Inpres 5. As noted in section 1.3, with this decree the President instructed Bappenas to prepare a National Action Plan on Corruption Eradication (Ran-PK). In December 2004 the then Bappenas Minister, Sri Mulyani, established a team to draft Ran-PK and consultations were held with local officials and civil society groups in a number of cities. Nevertheless, overall, local governments and civil society were involved only to a limited extent in the development of Ran-PK, which may have been due to the short time period of two months within which the strategy was assembled, as the Action Plan was completed in February 2005 (Schütte, 2007).

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<sup>153</sup> The President was dismissed through a long and convoluted process. Indeed, when President Wahid questioned the MPR as to whether the proceedings against him were a political trial (that is, a motion of no confidence) or a legal one (that is, an impeachment), members of the MPR were incapable of providing a clear answer, implying that the proceedings were merely political.

<sup>154</sup> BBC News, 29 May 2001.

Reacting to criticisms that arose during the consultative process, the government dubbed the National Action Plan a living document, meaning that it is open to revision and adjustment. It is also updated annually to include the latest corruption eradication initiatives. In September 2006, Bappenas published an updated version of Ran-PK and introduced three changes, all of them related to Ran-PK's prevention pillar. However, the updating process shows some significant shortcomings as the newly integrated changes are not captured in the monitoring and evaluation part. Nor was the information that the Witness Protection Bill had been enacted and UNCAC ratified in 2006 included in the updated version and implementation of these legal obligations is likely to escape the monitoring process.

### Knowledge base

It is difficult to evaluate which knowledge base or information was used in the design of Ran-PK. There exist a number of studies and reports on corruption in Indonesia which identify the different forms and levels of corruption and corruption-prone areas. These are published mainly by members of the international donor community, such as the World Bank's Country Assistance Strategy Progress Reports and the ADB Country Governance Assessment Report for the Republic of Indonesia, which was prepared to assist the government in drawing up and implementing action plans for reform. Also the "Partnership" supported the government's co-ordination of anti-corruption efforts through a project mapping all the anti-corruption approaches of each government department. The results of this exercise were fed into the discussions with Bappenas on the development of the National Action Plan and with MenPAN on its implementation (Hendytio et al., 2006). However, the understanding is that Ran-PK's knowledge base consisted more of internal meetings, such as an analysis meeting held in Bali in 2002, as well as of external consultations with local officials and civil society groups, than of studies and surveys. This is most likely due to the fact that Indonesia's approach to fighting corruption has for a long time concentrated on enforcement and hence the relationship between fighting corruption and improving governance may not have been to the fore amongst the planners.

### Content and priorities

The beginning of the Reformasi era was marked by a tendency to concentrate anti-corruption efforts at the national level and to focus on institutions based in Jakarta. This tendency also extended to civil society, as most anti-corruption NGOs were operating in and around Jakarta and rarely had counterparts in the regions.<sup>155</sup> However, in the course of decentralisation corruption had spread to the provinces and regions and anti-corruption activities were badly needed at the local and regional levels as well.<sup>156</sup> As a consequence, civil society organisations, donors, the media and other anti-corruption stakeholders started to expand their activities to the regions and municipalities outside the capital, with the result that the number of local and regional anti-corruption initiatives has grown significantly over the last few years.

Furthermore, the post-New Order efforts to battle corruption have largely focused on the investigative and punitive aspects, not least the catching of some big fish, as demanded by the public (Schütte, 2007). The reason for this is well illustrated by the original governance agenda of the Yudhoyono government: "To create an Indonesia that is just and democratic, the main agenda is to improve the performance and to restore public faith toward law enforcement agencies, especially the AGO and the Police, and also the functioning of judicial system that is credible and

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<sup>155</sup> Business Anti-Corruption Portal, Indonesia country profile, [www.business-anti-corruption.com/normal.asp?pageid=226](http://www.business-anti-corruption.com/normal.asp?pageid=226)

<sup>156</sup> [www.kemitraan.or.id/about.origin.sectors.php](http://www.kemitraan.or.id/about.origin.sectors.php)

accountable”.<sup>157</sup> Indonesian anti-corruption experts explain Indonesia’s anti-corruption efforts as being designed to “clean the broom that sweeps the dirty floor”, with the broom meaning the law enforcement agencies such as the police, Attorney General’s Office and the judiciary.

It was also the Yudhoyono government that introduced, with Ran-PK, an overall anti-corruption strategy for the Indonesian national public administration, involving 92 government institutions. Ran-PK’s goal is to establish a government-wide framework for addressing corruption; “it is meant as an umbrella in designing corruption eradication programs and to adapt various national efforts to eradicate corruption in Indonesia”, as the plan says itself. Ran-PK mandates all government institutions that fall under the authority of the executive branch to develop institutional anti-corruption action plans. Ran-PK is divided into four parts: i) corruption prevention and enforcement in the rehabilitation and reconstruction of Aceh and North Sumatra; ii) general preventive measures; iii) general enforcement measures; and iv) guidance for monitoring and evaluating its implementation.

While the plan acknowledges the fact that ideally corruption prevention should be implemented in all integrity pillars of the state (executive, judicial and legislative bodies alike), it also emphasises that due to a lack of resources and capacities on the part of the government and the “civil community”, at present action must be prioritised.

Provisions on prevention include:

- The redesign and improvement of public service performance to facilitate public access to services, and to guarantee professional, high quality, punctual public services without incurring extra costs;
- The improvement of transparency, supervision and sanctions on governmental activities in order to increase the government’s accountability in managing the state’s financial and human resources, and to allow for civil society participation in the economic field. Priority steps are directed at the establishment of the financial management system, the public procurement system, and the apparatus for human resource management;
- The consequent application of the rule of law principle through enhancing the performance of instruments supporting the eradication of corruption. The aim is to improve the legal culture as well as public participation in corruption eradication. Priority steps are directed at the improvement of public awareness and participation and the establishment of supporting legal materials.

The enforcement elements (the plan itself refers to “repressive” elements) of Ran-PK focus on the acceleration of enforcement and legal certainty and emphasise the application of sanctions to any irregularities causing loss to the state. One priority clearly lies in the prosecution of big corruption cases and in the recovery of stolen state assets, among other means by building the capacity of the law enforcement agencies and by developing an oversight system for this sector<sup>158</sup> (Davidson et al., 2006).

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<sup>157</sup> Cf. “Agenda of the First 100 Days of President SBY’s United Indonesia Cabinet“, Davidson et al., 2006, p. 17.

<sup>158</sup> Speech presented at Session II: Poverty Reduction and Governance Reform, the CGI Meeting held in Jakarta on 20 January 2005, by Sri Mulyani Indrawati, then Minister of State for National Development Planning (Bappenas)

[www.bappenas.go.id/index.php/index.php?module=FileManager&func=download&pathtext=news&view=200501/07\\_Poverty,\\_Gov\\_Reform,\\_RAN\\_PK\\_-\\_CGI\\_2005\\_-\\_final.pdf](http://www.bappenas.go.id/index.php/index.php?module=FileManager&func=download&pathtext=news&view=200501/07_Poverty,_Gov_Reform,_RAN_PK_-_CGI_2005_-_final.pdf)

The formulation of these activities indicates a Ran-PK emphasis on preventive measures (89 action plans are directed towards prevention, compared to 17 action plans for enforcement and 4 action plans for monitoring and evaluation). However, the plan does not go into very much detail about the envisioned activities and indicators are vague. Also, important state sectors are not or only partly addressed, for example the judiciary, the financial sector, the private sector, civil society, political parties and the legislative branch. Not included either are provisions for the armed forces, the reform of which has been already set out in the Armed Forces Law. Part of this might be explained by the aforementioned resource restrictions. Others argue that this is because those sectors are not under the control of the executive branch and are consequently not included in Ran-PK (Interviews, May 2007). Despite the commendable effort of the government to start fighting corruption in the executive branch, where its authority lies, the fact that corruption in the judiciary and Parliament is not being addressed in one way or another in this national effort is unfortunate, as reducing corruption in these sectors is important for the government's effectiveness in addressing corruption in other areas (Davidson et al., 2006).

### 2.3 Provisions for implementation

Actual implementation of most of the many anti-corruption efforts is one of the main problems in Indonesia. Many critical elements for effective implementation may have been established (key legal anti-corruption provisions in place, sufficient funding pledged by development partners, a numerous and active civil society, sufficient media freedom), but despite these positive conditions, many of the efforts – including Ran-PK – are coming to a halt at the implementation phase. According to a survey mandated and published by the “Partnership” and conducted by the Center for Law and Good Governance Studies (CLGS) in 2006, some government units have not implemented Ran-PK at all, not even partly.

#### Roles and responsibilities

The actual process of implementing Ran-PK has been left to the individual government units at both local and national level, and thus depends on the initiative of these units. Although MenPAN is formally assigned the role of coordinating, monitoring and evaluating implementation, it does not seem to have the capacity, political authority and resources to do so. However, at local level the government is trying to encourage the provinces to take the initiative in formulating and implementing their own Regional Action Plans. With regard to monitoring and evaluating implementation, Ran-PK explicitly states that this should be conducted both internally and externally. Internally, it is MenPAN which is tasked to monitor and evaluate progress on implementation. Externally, at least on paper, civil society representatives should be included in the monitoring process, for example in the form of working groups, which again should be coordinated by MenPAN. KPK is also included in the complicated reporting mechanism, as the reporting process expects MenPAN to forward the reports on implementation (see below) to KPK and to the President. In addition, KPK is mandated by the KPK Law to conduct supervision, in-depth study and analysis of agencies mandated with corruption eradication, which includes MenPAN.

#### Monitoring and communication

To track the progress of government agencies towards fulfilling the targets they have set out in Ran-PK, MenPAN has created an elaborate monitoring and evaluation system (Kormonev). The Kormonev system is supposed to feed data from every Ministry, province and district (Kabupaten) to MenPAN. For this reason, so-called Kormonev Teams are to be established regionally. The data should then be aggregated and analysed by MenPAN, which is further mandated to submit to the

President semi-annual reports on the implementation of Ran-PK. A national chair group exists, consisting of public officials as well as civil society and private sector representatives.

Unsurprisingly, considering the enormous task of monitoring the performance of over 500 disparate government units, the Kormonev system is facing problems in practice. The number of implementation reports received by MenPAN is reportedly low. Due to this lack of data, it seems that the principal indicator MenPAN is using to gauge success with regard to reducing corruption is Indonesia's ranking in the global TI Corruption Perceptions Index.

To date, Ran-PK is little known to actors who have not participated in its elaboration and communication about its existence has been weak or non-existent. Further, there has not been any tangible communication about progress on Ran-PK implementation, which may well be attributable to its so far dysfunctional monitoring and to a lack of vision or awareness about the need to communicate progress of anti-corruption reform to stakeholders and the public at large.

## Resources

It is not clear whether Ran-PK does allocate extra resources to support its implementation. It does not require, however, that the ministries include funding for their anti-corruption efforts in their budget process (Davidson et al., 2006). This presents a serious challenge to implementation on two fronts. First, MenPAN does not have the authority or the financial and human resources to carry out its monitoring and evaluation function effectively without additional support. Within MenPAN, the Deputy of Supervision is in charge of monitoring Ran-PK's implementation. However, his department is tasked with other supervisory functions as well and gets little support, even from other deputies within MenPAN who by thematic proximity and responsibility could contribute to more effective monitoring. Secondly, the government agencies cannot count on extra funding for additional activities, challenging their already stretched resources.

## 2.4 Support of development partners for Ran-PK

Development partners provided support for Ran-PK in various forms, directly and indirectly. Some of these contributions are described below.<sup>159</sup>

“Partnership for Governance Reform”, together with Sida and in cooperation with Bappenas, provided support for the public consultation process of Ran-PK. The objective was to support Ran-PK's implementation by facilitating CSO involvement, public consultation and socialisation of Ran-PK, as well as coordination between the community and the government. Furthermore, this time in cooperation with MenPAN, the “Partnership”, together with Sida, supported the monitoring and evaluation process of Inpres 5 by facilitating a multi-stakeholder process and the establishment of an external monitoring and evaluation team.

GTZ (German Technical Cooperation), in cooperation with MenPAN, focused on the strengthening of civil society organisations and the achievement of better public services at the regional level and offered advice on administration-related policy formulation. While these steps are contributing towards civil service reform and the introduction of accountable and predictable administrative procedures and complaint mechanisms as a whole, there has so far been no specific Ran-PK support.

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<sup>159</sup> A donor matrix can be found on KPK's homepage [www.kpk.go.id](http://www.kpk.go.id)

Likewise touching implicitly on Ran-PK contents, the World Bank, in cooperation with the government and Bappenas, supported capacity building within Bappenas in order to assist with the development of a disclosure strategy, in consultation with the executing agencies, civil society and donors. It also assisted the development of appropriate tools for implementing increased disclosure, and for defining and developing the role of Bappenas in this regard. Finally, the project assisted in building the capacity of the agencies concerned to comply with the requirements of increased disclosure, and the civil society groups to understand their rights and make use of the disclosed information. It is, however, unclear whether such activities follow a clear link to Ran-PK.

## 3 Analysis

### 3.1 Contextual factors that favoured or impeded anti-corruption policy making

#### (+) Reformasi: street movement demanded change from the outside

As has been elaborated in the previous section, the fall of former President Soeharto and the replacement of the New Order regime by the evolving Reformasi movement was one of the most important factors in favour of anti-corruption policy making in Indonesia. It not only put reform processes and anti-corruption high on the political agenda, it also enabled the formation of an active anti-corruption civil society and free media, two important preconditions for creating an environment of change.

#### (+) Economic and socio-political collapse forced acceptance of reform into the wider community

The traditional reserve that the corporate sector and much of the middle class felt towards democracy and dissent changed dramatically when due to the economic crisis their economic interests were destroyed, and ultimately even their personal security was threatened when the authoritarian New Order entered its last days. This damage caused by poor and nepotistic governance encouraged an opening of minds towards an agenda of clean governance.

#### (+) UNCAC ratification helped to push the formal legal anti-corruption agenda

Another positive factor which is supporting the anti-corruption policy making process in Indonesia is the country's ratification of the UN Convention against Corruption (UNCAC), as the ratification process set a variety of anti-corruption activities in motion.

#### (-) Political compromises at the expense of determined change

The President's party has only 57 seats out of 550 in Parliament. This weak standing in Parliament, together with the fact that the President is known to be a cautious and incremental decision maker, that the "rainbow cabinet" consists of a broad variety of parties, and that the powerful Vice-President is also President of the Golkar Party with a majority of seats in Parliament, led to a slow pace in initiating and implementing the necessary reforms.

### (-) Absence of an organised opposition

One of the most notable features of Indonesia, particularly through the latter stages of the New Order, was the absence of any form of organised or coherent opposition. The sudden collapse of the seemingly unassailable New Order caught all by surprise, creating a problem of no effective or organised drivers of change – it was spontaneous and the spearhead group, the students, largely rejected offers to be “co-opted” into active politics after the transition began.

### (-) Natural disasters impact on priorities in the political agenda

As important as the fight against corruption may be as a long term issue, it is regularly bumped down the President’s list of priorities due to other more pressing short-term concerns. An unprecedented series of natural disasters, including the Aceh tsunami of December 2004, the Nias earthquake of March 2005, the earthquake in Yogyakarta and Central Java in May 2006, the tsunami in West Java in July 2006, as well as the growing threat of avian influenza, have placed an extraordinary burden on the government of President Yudhoyono, which already had its hands full with an ambitious development agenda (Davidson et al., 2006).

## 3.2 Main drivers and opponents of change

### Presidential leadership key for anti-corruption reform

On the one hand, President Yudhoyono is an important driver of change, not least as the driving force behind Ran-PK by means of Inpres 5 and because of his political will to fight corruption. On the other hand, the President has yet to prove that next to political will he can also show results in the fight against corruption, and that his efforts will not slowly peter out, due to the still strong resistance by the old elite and vast bureaucracy against reform.

### Civil society with watchdog and advocacy function but small influence on policy design

The role of civil society in the policy process is to a certain extent ambivalent. On one hand, civil society has been instrumental in bringing the need for anti-corruption efforts to the top of the political agenda, in raising awareness and in consistently pressing for change. On the other hand, civil society has only limited influence on the policy process. At the institutional level, for example within the DPR, a rule encourages rather than requires consultation with CSOs, and a lack of budgetary support for consultations results in limited regular civil society inputs. This is also due to a presumption in political circles that civil society’s capacity to mobilise successfully for or against particular electoral candidates or parties is limited and thus also their need to be taken seriously. In essence, the government and the bureaucracy still dominate law and policy making. Nonetheless, civil society is an important driver of change and government agencies increasingly seek the advice and cooperation of experienced civil society organisations (Schütte, 2007).

### Demonstrations: people’s power brings about public response

Ending KKN (corruption, collusion and nepotism) was a central demand of the students who played a leading role in unseating President Soeharto in May 1998. Prior to Mr. Wahid’s impeachment, Indonesia was also in an uproar with rallies, protests and killings. It was the chaos Mr. Wahid had

led Indonesia into, his involvement in a corruption case, as well as the subsequent protests in combination with vanishing political support that led to his impeachment.<sup>160</sup>

#### Anti-corruption institutions start to show some effects

A series of oversight and prosecuting institutions, such as the Anti-Corruption Commission (KPK), the Anti-Corruption Court, the Commission for Fair Business Supervision (KPPU), the Judicial Commission as well as the Financial Transaction Task Force (PPATK), have recently been established or strengthened and are contributing to bringing about some gradual change, despite their problems in relation to funding, limited authority and lack of independence. By way of example, PPATK reports can play an important role in deterring and punishing corruption, the Judicial Commission has helped to bring more transparency into the nomination of judges, and KPK and the Anti-Corruption Court are proving successful in investigating and prosecuting corruption cases.

#### International influence can act as a catalyst for reform agendas

The influence of the international community is less significant than in other developing countries. However, given that most activities of development partners have a strong focus on governance and anti-corruption, they still give a considerable impetus to the country's anti-corruption agenda (see section 3.4. below).<sup>161</sup>

#### Parliament and political parties are part of the problem, not the solution

The nature of political coalitions in Indonesia distorts any incentives to fight corruption because coalitions are opaque and change from issue to issue. This allows politicians to minimise their responsibility for persistent KKN and makes it more difficult for the public to discern which parties are responsible for blocking progress on the issue. Pressure on members of parliament to collect funds for their party is believed to influence the way parliamentarians vote and how they exercise their role as a check on the executive (World Bank, 2003).

#### Soeharto's legacy: the old elite continues to be a drag for reform implementation

The legacy of President Soeharto's authoritarian regime – widespread systemic corruption, a complex and distorted bureaucracy and an entrenched corrupted elite – is still largely intact despite the post-Soeharto anti-corruption efforts. The whole mechanism of corruption and rent-seeking survived in a form that is even more corrosive and destructive because it is now more arbitrary and less structured (Robinson, 2006). In addition, the bureaucracy is resistant to change and the assets looted by former President Soeharto have not yet been recovered.

#### Private sector hesitant of change

Business sector representatives seem to have a general fear of change and of how the new anti-corruption approaches will affect particular and vested interests that had a stake in the pre-existing

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<sup>160</sup> Indonesians joked that Sukarno's rule had been the time of "Old Order," Soeharto's, "New Order," Habibie's, "No Order," and Wahid's, "Out of Order."

[www.preventconflict.org/portal/main/background\\_politics.php](http://www.preventconflict.org/portal/main/background_politics.php)

<sup>161</sup> Notably, pressure exercised by the Financial Transaction Task Force (PPATK) had been instrumental in boosting Indonesia's anti-money laundering regime. Indonesia was also a founding member of the ADB/OECD Anti-Corruption Initiative for Asia-Pacific. Its active implementation of this programme has clearly influenced Indonesia's domestic anti-corruption agenda.

system. This includes those who simply lack the confidence to operate on the basis of merit, which is inherent in an uncorrupted system, and others who simply do not see that there are benefits from these changes.

### 3.3 Rationale and political underpinning for the choice of policy option

The fall of President Soeharto was the turning point in Indonesia's anti-corruption efforts. From 1998 onwards, the Reformasi movement emerged to promote an objective of restoring public faith in government institutions. The movement intended to send out a clear message: corruption does not go unpunished. The underlying rationale for this was to soothe the public outrage which had flared up on several occasions. By establishing a law enforcement body for corruption cases (KPK) operating outside the corrupt Indonesian police force and Office of the Attorney General, the government also hoped to live up to the high public expectation in relation to prosecuting corruption cases. Additionally, because of the still strong standing influence of a corrupt elite, the establishment of an independent anti-corruption body seemed to be the most promising way of satisfying the public's expectations.

Interestingly enough, until the elaboration of the National Action Plan in 2005, no attempts by the government of Indonesia were made to design a systematic and holistic anti-corruption framework, which was most likely due to a near obsession with "catching corruptors" by much of civil society, including the student movement, and wider public opinion supported by a media industry keen to put a "face" on corruption. President Yudhoyono did not communicate the underlying rationale for his choice of policy option, i.e. the establishment of Ran-PK. But the Government of Indonesia, represented by its Cabinet, had defined corruption eradication as one of Indonesia's main national policy priorities, and Ran-PK can thus be understood as the expression of the government's efforts to bring a large array of specific but uncoordinated anti-corruption measures under an anti-corruption policy framework, and to introduce an overall anti-corruption strategy for the Indonesian national public administration. The President realised that the many fragmented and sanction-oriented anti-corruption initiatives needed to be complemented by a prevention-oriented approach.

### 3.4 Role of development partners

In 2003, a World Bank report stated that "development assistance is only a small share of Indonesia's budget and economy. The role of Indonesia's development partners and their impact on what happens in Indonesia should not be overstated" (World Bank, 2003). Nevertheless, development partners have provided technical and financial support to anti-corruption initiatives, sometimes more strongly behind the scenes (PPATK) and sometimes through intermediate organisations such as "Partnership". From 2000 to 2003, as detailed in Indonesia's commitments to the IMF and in strategy papers prepared by the World Bank, the programmes of both organisations were linked explicitly to governance and anti-corruption criteria (Hamilton-Hart, 2001).

A good example of assistance through intermediate organisations is the cooperation with "Partnership", which also supported the consultation process for Ran-PK. The "Partnership" seemed to be an ideal and innovative instrument for this, having the important advantage of local ownership. An instrument possessing high credibility with local partners was crucial at the time as certain donor institutions, and in particular the World Bank, had to fight against a bad reputation and a lack of credibility for having cooperated with the corrupt President Soeharto regime for so long. But apparently "Partnership" could not live up to the task it had initially been established for, and the inability to communicate the results of its activities led to uncertainty as to what the organisation was actually achieving. A change of guard in embassies and donor missions also contributed to a somewhat more distant attitude (Hendytio et al., 2006). In addition, development

partners became keen to fund reform projects directly with the government. Consequently, today the “Partnership”, at one time the largest funding mechanism for good governance programmes in Indonesia, is only one of many sponsors of governance initiatives, and it appears that KPK has now taken over the role of coordinating donor initiatives related to anti-corruption (not necessarily Ran-PK specific) and is facilitating information sharing to enable better coordination.<sup>162</sup>

Development partners are crucial in funding civil society organisations, as most of these organisations are dependent on external funding, which is mainly provided by development partners. Without this support, many Indonesian civil society organisations would have difficulty in surviving financially.

Moreover, most diagnostic surveys have been initiated by donors, such as the various multilateral bank assessments and the 2001 Survey on Corruption in Indonesia by the Partnership for Governance Reform. There is also fully-fledged donor support (Australia, MCC) to TI-I national surveys on corruption.

### 3.5 Interplay with related governance reforms and associated actors

After 1998, Indonesia embarked on a very extensive, quickly evolving but not coherently developed or led political and institutional reform programme. The agenda included constitutional reform, electoral reform, legislative empowerment, decentralisation, judicial reform, civil service reform, placing the armed forces under civilian control, separating the police from the armed forces, corporate governance reform, fighting corruption and other kinds of unfairness, together with respect for human rights, gender equity, indigenous rights, freedom of expression and association and press freedom. As part of the response to the economic crisis there were initiatives aimed at increasing fiscal transparency and financial monitoring to help to disclose and consolidate the hidden financial sources operated by many departments and agencies in the New Order. The court system was also targeted for reform. A new bankruptcy code and commercial court were instituted, albeit badly, early in the IMF reform programme. The World Bank also launched a national institutional review to monitor governance performance, was involved in civil service and judicial reform and had a formal commitment to consulting with civil society organisations (Hamilton-Hart 2001). These efforts indicate that the Reformasi movement and the reforms undertaken since the resignation of President Soeharto were practically an anti-corruption agenda by itself.

In order to improve implementation, Ran-PK has been synchronised with the government’s Medium Term Development Plan 2004-2009 and related documents, for example Law Summit III (commitment by leaders of law enforcement agencies) and the recommendations for good governance acceleration as proposed by the “Partnership”.<sup>163</sup> In theory, links also exist to a broad variety of governance and anti-corruption reforms, some of which are listed below. However, awareness of Ran-PK is weak among public officials who are working on these governance reforms and whether the mentioned links have been elaborated upon in practice is not clear:

- Civil service reform is considered one of the most crucial but most neglected parts of governance reform (Hendytio et al., 2006), and is linked to Ran-PK as the National Action Plan aims at improving the quality of public services;

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<sup>162</sup> [www.anticorruptiondonors.kpk.go.id](http://www.anticorruptiondonors.kpk.go.id)

<sup>163</sup> Speech presented at Session II: Poverty Reduction and Governance Reform, the CGI Meeting held in Jakarta on 20 January 2005 by the then Minister of State for National Development Planning (Bappenas) [www.bappenas.go.id/index.php/index.php?module=Filemanager&func=download&pathtext=news&view=200501/07\\_Poverty,\\_Gov\\_Reform,\\_RAN\\_PK\\_-\\_CGI\\_2005\\_-\\_final.pdf](http://www.bappenas.go.id/index.php/index.php?module=Filemanager&func=download&pathtext=news&view=200501/07_Poverty,_Gov_Reform,_RAN_PK_-_CGI_2005_-_final.pdf)

- Ran-PK aims at improving the procurement system in relation to goods and public services, which interlinks with the previous procurement reform;
- Judicial reform, as one of Ran-PK's goals is consequently to enforce the rule of law principle and to build awareness accordingly;
- Decentralisation, as Ran-PK contains special provisions for the Indian Ocean tsunami-afflicted regions of Aceh and North Sumatra, and addresses both national and local government units; and finally
- The improvement of the existing legal framework, which goes in the direction of a French project on preparing integrated anti-corruption, anti-money laundering and financial crime legislation, which is being pursued in cooperation with KPK, AGO and the Ministry of Justice.<sup>164</sup>

### 3.6 Factors that facilitate or hinder implementation

Weak ownership and predictability of Ran-PK leads to little significance of the plan

The annual updating of the Plan in order to include the latest corruption eradication initiatives and new developments also presents a problem for enforcement. As long as the Plan's contents are subject to change, they remain unclear and therefore lose most of their significance. Bappenas has tried to overcome this deficiency by including Ran-PK in the government's Mid-Term Development Plan. In addition, Ran-PK was drafted within two months, a time frame which was clearly too tight to allow for a genuine build-up of serious buy-in from civil society, the private sector as well as the various components of the state sector, notably Parliament. Another issue, related to the low level of civil society ownership, was the restriction of the agenda to the state sector, and even then not to all parts of the state. With no responsibility for the success of the programme given to non-state actors, their capacity to mobilise and maintain pressure to ensure implementation of the programme is impeded.

Lack of priorities, activity selection and incentives hinders implementation

Ran-PK is not really strategic in the true sense, as it is weak on prioritisation, vague on time frames and does not create significant incentives and sanctions. While Ran-PK sets out annual performance indicators, it does not provide rewards for good performers or sanctions for poor performers in the process. In addition, after almost two years of existence, many provisions and their indicators still need to be clarified as to what really needs to be done. Ran-PK also mandates all government institutions that fall under the authority of the executive branch with the development of institutional anti-corruption action plans.

Weak leadership and capacities of lead agencies for Ran-PK contrast with the ambitious objectives of the Plan

Inpres 5 assigns Bappenas the responsibility for coordinating Ran-PK implementation and MenPAN for monitoring and evaluating its implementation, but it does not give any organisation the responsibility, authority or resources for taking a leading role in moving the plan forward (Davidson et al., 2006). It appears there is limited leadership and capacity for advancing Ran-PK on the part of

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<sup>164</sup> Apparently, a draft integrating text on corruption in compliance with UNCAC is currently in preparation.

the two ministries. The latter is a financially weak ministry with limited capacity and a very limited presence at local level. In addition, its role in the fight against corruption is principally seen in establishing civil service performance standards rather than explicitly to reduce or punish corruption or in trying to identify and redress integrity weaknesses in civil service procedures. As a result, there also appears to be a low level of engagement on the part of first and second echelon officials, who are crucial to any effort to accelerate change within the bureaucracy. Ran-PK is in danger of becoming little more than the bureaucracy's way of doing the minimum required to show the President that it is complying with Inpres 5 (Davidson et al., 2006).

Weak monitoring of Ran-PK leads to lacking information on progress, and difficulties in identifying challenges

Information on anti-corruption policies as well as their implementation status is not easily obtained in Indonesia, which is also valid for Ran-PK. Although there are monitoring provisions in the National Action Plan, they are not put into practice, and MenPAN is a weak institution not well suited for the task. A number of government institutions have not implemented Ran-PK at all and none of the units have implemented all provisions relevant to them. The lack of monitoring can lead to weak implementation and weak accountability of the public officials responsible for this task. However, obtaining data and mapping the policies responding to Ran-PK is equally very difficult, as has been shown by the study of CLGS, which was mentioned earlier.

Poor communication makes Ran-PK insignificant

Awareness and knowledge of Ran-PK are low even in the government units to which Ran-PK is relevant. Hence, self-initiation by responsible agencies of the executive to carry implementation of Ran-PK forward is absent and the lack of explicit and widely communicated anti-corruption commitments by the government makes a sustained political debate impossible. Ran-PK has to date played an insignificant part in the Indonesian anti-corruption landscape.

## 4 Lessons learned

Lead agency to coordinate implementation does not have the capacity to take the lead

While several initiatives by the President and single institutions indicate some political will to fight corruption, political will by itself is not enough, and the necessary authority, mandate, expertise, knowledge and managerial skills are crucial for implementing an anti-corruption strategy or action plan. While MenPan is tasked with coordinating and monitoring the implementation of Ran-PK, it does not have the political authority, capacity and resources to take a leading role in moving the plan forward. Hence, the absence of a functional coordinating mechanism seriously hampers the effectiveness of Ran-PK as well as that of other anti-corruption initiatives. At the same time, caution should be applied so as not to create yet another commission, unit or institution but rather make effective use of existing ones by providing them with sufficient political, technical and financial support and above all by using the potential synergies between those institutions.

A whole-of-government approach neglects prioritising and sequencing

Ran-PK is the result of a presidential decree instructing all public agencies to develop anti-corruption plans. This is a commendable approach in theory as corruption is perceived to happen

everywhere, but in practice it is not matched with capacities and resources, both technical and financial. An attempt to set priorities and sequence their implementation in line with capacities, resources and above all key government goals was sought, but did not materialise.

#### Self-reform without ownership, capacities and resources does not bring desired results

The design of Ran-PK relies on self-reform of government agencies and units. While agencies had an opportunity to feed their proper self-reform plans into the development of Ran-PK, implementation proved to be an entirely different matter. Lead public executives had not participated in the design of the action plans, implementation was not linked to any incentive system, technical and bureaucratic capacities to translate commitments into practice were overstretched in an already heavy bureaucracy and the lack of resources for additional responsibilities and activities did the rest.

#### Lack of monitoring and continuing communication plunged Ran-PK into insignificance

Although MenPAN, as the responsible agency for Ran-PK monitoring, elaborated a monitoring system, this does not seem to have worked effectively to date. The resulting lack of knowledge about progress and results together with an entirely absent communication strategy did not allow creating a sustained public and political debate on Ran-PK, which apparently soon plunged into insignificance.

The punitive approach allowed public trust to be won, but formal and informal institutions that allow corruption to happen have yet to change

Law enforcement seems to have made some impact in Indonesia. The punitive measures are sending a strong message that corruption is not risk-free, and some Indonesian commentators are claiming that these measures are changing the way bureaucrats behave (Davidson et al., 2006). This means that persistent investigation and prosecution can lead to more fear on the part of bureaucrats and behavioural change amongst them. But enforcement – standing alone – is not a sufficient anti-corruption instrument. The personalising of the corruption problem tends to disregard the systemic nature of the problems and the government still needs to deliver on institutional reforms and corruption prevention in order to reduce the incentives and opportunities for engaging in corrupt practices.

#### Political aspects of corruption eradication are neglected in technocratic approaches

Despite an overwhelming public demand for anti-corruption reform and despite high-level political commitment to this endeavour, implementation of anti-corruption initiatives, in particular the preventive ones, has not been overly successful. An important part of the explanation for these difficulties lies in the fact that political aspects of anti-corruption eradication are grossly underestimated or simply not taken into account. Thus, few efforts have been made by the government and development partners to build wide public support for an anti-corruption agenda. The relatively narrow Ran-PK is dealt with as a technocratic approach to acting against corruption but is ill-equipped to deal with powerful political and bureaucratic opponents. Also, development partners have so far not provided sufficient space in programming to support the political, not just technocratic, aspects of eradicating corruption.

Policy design and implementation continues behind a veil of secrecy that limits transparency and civil society involvement

Enhancing transparency in order for all stakeholders to be able to participate in the policy making process is an important factor in enhancing the effectiveness of reform. But the prevailing bureaucratic culture of secrecy creates a veil behind which policies, laws and regulations are made without much external participation or scrutiny. While the process has opened up already thanks to civil society pressures and an active media, systematic efforts to make policies, draft legislation and regulations subject to public review and comment have not been incorporated as standard practice in Indonesia's government ministries and agencies. Transparency in reporting about progress in implementation is also still weak as publicly accessible indicators of performance for each agency have not so far been part of Ran-PK.

The creation of new laws and institutions has been favoured over holding public officials accountable

There has been a tendency in Indonesia to create new task forces and commissions, instead of holding leading officials accountable for the lack of progress. Only 'token' corruptors get dealt with, normally after they have fallen from grace in their networks. To date, the public perception is that the law is still being applied in a discriminatory manner. It is suggested that rather than creating yet more new institutions, the existing ones with a clear anti-corruption responsibility should be carefully monitored for progress and systematically strengthened where they show commitment.

The usefulness and feasibility of one single anti-corruption strategy in a large decentralised country may be questionable

In a country like Indonesia with its huge territory, thousands of islands and more than two hundred million people, the usefulness and feasibility of one single national anti-corruption strategy needs at least to be questioned. While a strategic vision at central government level is certainly needed and some guidance as to the national priorities in the fight against corruption are important, realities on the ground seem to indicate that anti-corruption efforts closer to the people affected by malpractice are significant alternatives and complementary approaches. A concentration of resources in those sectors and institutions most in need of reform on the one hand, and most willing to reform on the other, may also bring about more encouraging results.

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Anti-corruption policy making in practice:

## Nicaragua – A Country Case Study

Miguel Peñailillo and Angel Saldomando

**U4 REPORT 1:2007 PART 2C**



## Contents

<b>ACKNOWLEDGEMENTS .....</b>	<b>114</b>
<b>1 COUNTRY BACKGROUND.....</b>	<b>115</b>
1.1 RECENT POLITICAL LANDMARKS AND MAIN GOVERNANCE REFORMS.....	117
1.2 THE SCOPE OF CORRUPTION .....	118
1.3 HISTORY OF ANTI-CORRUPTION INITIATIVES AND INSTITUTIONAL FRAMEWORK .....	119
1.4 MAIN PLAYERS.....	121
<b>2 THE FACTS OF ANTI-CORRUPTION POLICY MAKING .....</b>	<b>125</b>
2.1 ORIGIN AND RATIONALE OF THE NATIONAL INTEGRITY PLAN (PNI) .....	125
2.2 DESIGN OF EXPLICIT ANTI-CORRUPTION INITIATIVES .....	126
2.3 PROVISIONS FOR IMPLEMENTATION .....	128
<b>3 ANALYSIS.....</b>	<b>130</b>
3.1 CONTEXTUAL FACTORS THAT FAVOURED OR IMPEDED ANTI-CORRUPTION POLICY MAKING .....	130
3.2 MAIN DRIVERS AND OPONENTS OF CHANGE .....	131
3.3 RATIONALE AND POLITICAL UNDERPINNING FOR THE CHOICE OF POLICY OPTION .....	133
3.4 ROLE OF DEVELOPMENT PARTNERS.....	134
3.5 INTERPLAY WITH RELATED GOVERNANCE REFORMS AND ASSOCIATED ACTORS.....	135
3.6 FACTORS THAT FACILITATE OR HINDER IMPLEMENTATION .....	136
3.7 RESULTS OF GOVERNMENT ACTION.....	138
<b>4 LESSONS LEARNED.....</b>	<b>139</b>
<b>5 BIBLIOGRAPHY .....</b>	<b>142</b>
<b>6 ANNEXES.....</b>	<b>145</b>

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This case study is part of the broadly-based research project undertaken by the U4 Anti-Corruption Resource Centre “Anti-Corruption Policies in Practice – What Can We Learn from the Experiences of Strategies/Policies?” The main objective of the project is to draw on research conducted in six countries and provide further insight into how and why frameworks for anti-corruption policies have been crafted, what were the driving forces at play, what factors promote or prevent the implementation of the policies and the role of development partners in the overall process. Its findings will contribute to the ongoing debate concerning how Article 5 of the United Nations Convention against Corruption (UNCAC) should be implemented.

This case study on Nicaragua addresses almost two cycles of government. The study, however, goes into greater detail, examining the period of transition between two governments and the Enrique Bolaños administration in its entirety. Particular attention is given to the country’s National Integrity Plan (PNI), which has served as the framework for anti-corruption public policy for the past five years. The case study draws on qualitative interviews conducted with a wide range of key sources and a literature review on the topic. The authors would especially like to thank those interviewed, as well as the participants in the validation workshop in Nicaragua (June 2007), for their significant contributions to the initial drafts of this study, and all those who generously offered their expertise, political knowledge and valuable time to this undertaking in Nicaragua. We sincerely hope that the content of this study is useful to the anti-corruption initiatives undertaken in Nicaragua and other national efforts that face similar challenges in the fight against corruption.

“There is nothing more difficult to take in hand, more perilous to conduct or more uncertain in its success than to take the lead in the introduction of a new order of things.”  
*The Prince. Niccolo Machiavelli.*

## 1 Country background

Nicaragua lived its first 110 years amid great political turmoil characterised by four decades of civil war, coups d’Etat, a US invasion and twenty years of occupation which inhibited the desire to build an inter-oceanic canal, and one of the longest dictatorial dynasties in Latin America, which began in the 1930s. Anastasio Somoza García and his two sons governed the country for 45 years, having been backed by the power of the National Guard<sup>165</sup> and having conceded a number of political positions to the Conservative Party. During the regime of the last Somoza, the government intensified the level of repressive violence it used against dissidents, particularly the Sandinista National Liberation Front (FSLN), a guerrilla group born in 1961 under the same banner as the Cuban revolution. At the same time, Somoza Jr. made economic decisions for personal and familial gain. The private sector, the upper class and the Catholic Church, which were powerful allies in the fight against Sandinism, withdrew their support from the dictator and turned on him. This backdrop set the stage for the fall of the tyrannical dynasty.

In 1979, the Sandinista revolution triumphed and a political process of socialist transformation began. The FSLN revolutionary government introduced sweeping changes. It overhauled the institutional framework of the economy in order to place the fundamental vehicles for capital accumulation in the hands of the state. It made changes to the allocation of rural property within the state as well as in the organization of society as a whole. In a decision consistent with the principles of democracy, it held elections in 1984, from which it emerged victorious and went on to govern for five years more. During that period, the Sandinista government led by Daniel Ortega lacked the support of other actors, had poor economic performance and faced a counterrevolution supported by the US. The civil war laid waste to the government and country, leaving in its wake high financial costs, a death toll of over 40,000, thousands of forced disappearances and exiled citizens, and 350,000 displaced inhabitants. In 1989, Nicaragua was plunged into an unprecedented economic crisis and a rise in corruption whereby high-ranking government officials began to run off with public and private spoils in an affair known as the *Sandinista Piñata*.

A new abrupt political change shook the country in 1990. The winner of the elections held that year was Violeta Barrios, the candidate nominated by the National Opposition Union (UNO) – a centre-right coalition supported by the United States – and widow of a prominent journalist murdered during the Somoza era. Violeta Barrios concentrated her efforts on bringing peace to the country and implementing a series of sweeping reforms emphasised in the Washington Consensus.<sup>166</sup> Nicaragua traded in its socialist system for a free market alternative, began to privatise state-owned companies, deregulated the economy and labour system and drastically scaled back social expenditure.

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<sup>165</sup> The National Guard was a military body organised and trained by the US forces in Nicaragua at the start of the 20<sup>th</sup> century, the reins of which were handed over to Anastasio Somoza once he took power.

<sup>166</sup> The Washington Consensus refers to a list of economic policies upon which in 1989 there was consensus among international lending agencies, economic institutes and think tanks headquartered in Washington, D.C., USA. These policies were thought to constitute the best economic programme that Latin American countries ought to implement and consisted of policies that focused primarily on fiscal austerity and adjustment, deregulation, privatisation and the liberalisation of foreign trade and foreign investment.

Following this transitional government, democratic changes were carried out. The subsequent elections of 1996 pitted the FSLN, with Daniel Ortega as its candidate, against the Constitutionalist Liberal Party (PLC), placing Arnoldo Alemán at the helm. The latter ultimately emerged victorious. The 2001 elections saw yet another PLC candidate win the presidency: Enrique Bolaños, who had held the vice presidency under the administration of Alemán and would later become his political opponent. The two PLC administrations continued the economic reform process begun in the 1990s and aimed at downsizing the state and promoting private enterprise as a driving force for growth. Their social policies depended on international cooperation as their primary source of funding during this period.

In January 2007, the FSLN regained power. Its government, headed by former President Daniel Ortega, has focused its discourse on poverty reduction.

### Political and institutional system

Under its Constitution, Nicaragua is a participatory and representative democratic republic. The executive branch is headed by the president of the Republic, who is elected by direct popular vote for a period of five years. The legislative branch is headed by the National Assembly (NA), a unicameral body comprised of 90 deputies and alternate deputies elected by popular vote. The former president of the prior administration and the runner-up in the previously held electoral race for the presidency are also deputies. The judicial branch comprises courts of justice, the highest body of which is the Supreme Court of Justice (CSJ), consisting of nine magistrates appointed by the NA. The CSJ designates positions within the judiciary. The legal system also has a Federal Public Prosecutor's Office (MP), a public accusatory body headed by an attorney general supported by a deputy attorney general, both of whom are appointed by the AN. The Supreme Election Board, whose members are appointed by the legislative branch as well, leads the electoral branch. The Office of the Comptroller General of the Republic (CGR) is led by a High Council comprising five members, who are also elected by the NA.

The political order of the state is established under the Constitution of 1987. This fundamental charter has undergone reform every five years (1990, 1995, 2000 and 2005) since 1990. The purpose of these reforms has been to modify the balance between the state institutions and wrest power from the executive.

### Governance and poverty

Conflict and poverty seem to have accompanied the country throughout its history. Recent years have been characterised by a perpetually precarious state of democratic governance and fragile political stability. In 2006, governmental effectiveness was deemed critical<sup>167</sup> after having dropped to alarmingly low levels during the Bolaños administration. There has been little control of corruption, with levels rising to those seen during Alemán's<sup>168</sup> term in office. Furthermore, the quality of freedom stands at chronically low levels. According to Freedom House, Nicaragua has been invariably ranked as *Partly Free*. With a score of 3 (on a scale that ranges from 1 – not free – to 7 – free) in terms of political rights and civic freedoms, Nicaragua failed to show any progress between 2000 and 2006.

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<sup>167</sup> Governmental effectiveness decreased during the Bolaños administration from 22% to 16.1% (World Bank, 2006).

<sup>168</sup> Corruption control stood at 22.3% in 1998, 39.8% in 2002 and 23.8% recently in 2006 (World Bank, 2006).

Nicaragua is the second poorest country in Latin America and the Caribbean following Haiti. With a per capita income of USD 895,<sup>169</sup> the country has a chronic poverty index of 54.6 %. Some 42% of the school-aged population does not attend school and the health conditions of most of the population are precarious. Despite improved economic growth in recent years,<sup>170</sup> the country shows no change in the situation lived by the overwhelming majority of the population,<sup>171</sup> in which inequalities also abound.<sup>172</sup> The country's dependence on development partners (DP) is high and represents 36% of the annual budget of the central government.

## 1.1 Recent political landmarks and main governance reforms

### Political transactions and bipartisan control

Since 1990, a system has been on the rise that is awash with corruption and underpinned by perks and shady deals to hold on to personal and patrimonial power with impunity. This situation, which has only recently come to light, did not, however, materialise overnight. The circumstances that created it can be traced back to an institutionally fragile country compelled to emerge from a military conflict in the 1980s, to secure political viability for its economic and political reforms and to ensure a peaceful coexistence between very polarised forces in the 1990s. From the outset, the bartering between political players for the most part lacked transparency, their dealings transpired without democratic consultation or validation, but with high levels of autonomy and cronyism in decision making, and *the good of the country* and *stability* were cited as justifications. These dynamics marginalised majority interests and increased the tendency of political players to utilise the social agenda as a front for their negotiations and conceal winners.

Although the interests at play endured successive crises as a result of renegotiations and reshuffling, they were closely tied to the system of negotiation that ensured their impunity and control. The most important reshuffle was the agreement negotiated between the FSLN and PLC in 2000 known as *The Pact*. The blueprint for this agreement first appeared on the drawing board in 1998 when social demands and upheaval became constants.<sup>173</sup> These events prompted FSLN sympathisers in different unions to unleash a spiral of violence that threatened the governance of the country. This spiral may have compelled President Alemán to sign a *Governance Agreement*, as the pact is also known, with the leaders of the Sandinista party, with which corruption was institutionalised in Nicaragua.<sup>174</sup>

This pact divvied up power within the government. This distribution of power was not only intended to “ensure the governance of the country”, but also presidential alternation and impunity and leadership on the part of the Sandinista and Liberal political parties in all branches of government (CINCO, 2005). The final episode of this political reshuffling included the recent

<sup>169</sup> Statistical yearbook for Latin American and the Caribbean (ECLAC, 2006).

<sup>170</sup> Economic growth rose from 0.8% in 2002 to 5.1% in 2004. In 2006, it stood at 4.0% (World Bank, 2006).

<sup>171</sup> Although poverty has decreased by 3% over the same period, it cannot be attributed to the economic growth seen.

<sup>172</sup> Nicaragua ranks 13<sup>th</sup> (55.1%) among the countries in the world with the worst income distribution, ahead of Brazil and behind Zambia, as determined by the Gini Index.

<sup>173</sup> Failure to comply with the national dialogue agreements and a lack of public services and staple foods, as well as stunted wages, underpinned the demands and unrest in the country.

<sup>174</sup> This description of the political negotiation process must not lose sight of cultural elements at play that could support a deepening of corruption. In 1996, a survey concluded that “Nicaraguans clearly distinguish between various types of questionable behaviour but tend to be more tolerant of corrupt practices when circumstances appear to have a reasonable explanation. In cases whereby a practice was deemed corrupt, most of those interviewed did not show a firm desire to punish the perpetrator” (Casals & Associates, 1996).

partial reforms to the Constitution in 2005, which were placed on hold until after the elections of 2006.

### Democracy and government priorities

During the period studied, two PLC governments came to power: the Arnaldo Alemán administration (1997-2001) and the Enrique Bolaños administration (2002-2007). The main themes of government policies under Alemán pivoted on economic adjustment and the reforms promoted by the International Financial Institutions (IFIs), chiefly the World Bank and the International Monetary Fund (IMF). The government's priorities focused on privatisation, municipalisation and public administration reform, as well as constitutional and electoral reform. Also under this administration, a blueprint for a poverty reduction strategy entered its initial stages. The strategy included a legal system reform programme, a national integrity plan, efforts to strengthen the institutionalised participation of civil society and a law on citizen participation. These reform initiatives contrasted with the multiple scandals of public corruption during that administration.

The Bolaños administration in turn inherited a large national deficit from the previous administration. Its economic collaborators adhered to the adjustment and reform policies encouraged by the IFIs and the government served up programmes and policies aimed at strengthening markets, private initiative and incentives for foreign investment. In many regards, Bolaños gave continuity to the priorities of the previous administration, particularly in areas of economic reform and poverty reduction under the Strengthened Growth and Poverty Reduction Strategy (SGPRS), supported by the World Bank and IMF and designed by the German government. Emphasis was also placed on implementing a host of structural reforms that would enable the country to be included in the Heavily Indebted Poor Countries (HIPC)<sup>175</sup> Debt Initiative. Seeking to reform the country's political system, the government also entertained a number of proposed reforms to the legal framework of the State powers and promoted an anti-corruption strategy that took the form of litigation targeting former President Alemán. Today, former President Bolaños is also facing charges of corruption.

At the start of 2007, Nicaragua completed its fifth renewal of government via elections. A broadly-based contingent of international electoral observers bore witness to the still uncertain credibility of these processes. In addition, a significant number of factors that can lead to a crisis persist. On the one hand, the country's principle political institutions are degraded,<sup>176</sup> the confidence of the population is very low and a strong contradiction exists between legality and legitimacy, while on the other, several constitutional reforms remain outstanding and a heated controversy exists over the quality of the democratic and economic direction of the country. Furthermore, from a government leadership standpoint the current president, Ortega, now six months into his term in office, lacks a clear government programme and the public agenda is highly variable. The stability of the pact with Alemán is an important factor upon which Ortega's successful negotiation of agreements with the PLC and the strengthening of the power of the executive hinge. Traditional development partners (DPs) have now been joined by Venezuela, a growing political force in the region.

## 1.2 The scope of corruption

Corruption in Nicaragua is systemic. There are two reasons for this. First, the interpenetration of political and economic interests siphons autonomy and neutrality from the state, as reflected in the

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<sup>175</sup> For further information on these structural adjustments and reforms, see: [www.bnc.gov.ni/publicaciones/HIPC](http://www.bnc.gov.ni/publicaciones/HIPC)

<sup>176</sup> For further information on the negotiation and conflict system, see the analysis performed by J. Spence (2004).

perk-driven practices and ongoing use of institutions on the part of political parties for individual gain. Second, the bulk of corruption lies chiefly in influence peddling, abuse of power and illicit enrichment (see characterisation and hot spots for corruption in Nicaragua in Annex I). These forms of corruption are intertwined and mutually reinforce one another, driven by a traditionally low level of risk in having to face sanctions for corruption. They are part of a system that reproduces itself.

The general opinion is that the level of corruption has risen sharply in recent years. Corruption appeared as a major phenomenon after 1998, the year in which the corrupt practices of the Alemán administration were exposed. Reference is made specifically to the incident whereby high-ranking officials siphoned international assistance provided for 20,000 families who were victims of Hurricane Mitch. At the international level, the country did not receive good news from the World Bank Index of 2001.<sup>177</sup> At the same time, a perception of growing corruption was widespread throughout the nation. Most of the population had a negative perception of various institutions, according to several opinion surveys. Some 88.4% believed that there was corruption in the Presidency, 85.8% in the NA, 81% in the Supreme Electoral Board and 80.8% in the CSJ (IEN, 2000). Official reports confirmed a total loss of prestige by the political class and the institutions as perceived by the public due to corruption, abuse of power, arrangements between parties and the inefficiency of institutions.<sup>178</sup> Moreover, according to other sources cited 87% of the population has an image of corrupt politicians, 70% do not believe in the honesty of public officials within the four branches of government and there is a strong demand for transparency and a renewal of politics.

While corruption became quite prominent<sup>179</sup> during the administration of Liberal Arnoldo Alemán, its roots ran much deeper. Even during the Violeta Barrios administration, reports of multiple cases of corruption circulated, and during the preceding administration the so-called *Sandinista Piñata*<sup>180</sup> occurred.

### 1.3 History of anti-corruption initiatives and institutional framework

One year into the Alemán administration, the government launched an anti-corruption initiative of little relevance known as the National Integrity Committee. The Committee, which received financial support from the World Bank, never ended up developing an anti-corruption policy or having any known impact (interviews, June 2007). Still, the World Bank provided support for a survey to be conducted whose results would serve as the basis for a strategy to be proposed to the

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<sup>177</sup> In 2001, in the area of *Rule of Law* Nicaragua was ahead only of Guatemala and in *Control of Corruption* it surpassed only Paraguay. As for its best ranking, in the area of *Regulatory Quality*, only Nicaragua ranked above Cuba and in *Government Effectiveness* it placed better than four other countries. For further detail, see Annex I.

<sup>178</sup> “The general opinion of the citizenry expressed in surveys conducted annually between 1997 and 2000 has shown that close to 90% of citizens feel that corruption exists in the government.” See the Human Development Report on Nicaragua, 2000, p.137 and the Human Development Report, 2003, p.115.

<sup>179</sup> One such case is that of former Comptroller General of the Republic under the Alemán administration Agustín Jarquín, who made claims that the president and his close associates engaged in illicit enrichment and embezzlement of public funds. The incident paradoxically resulted in the imprisonment of the comptroller in 2000. Incidentally, the individual who filed the charges had the expressed support only of a few international cooperation agencies and several sectors of civil society. The political class abstained from taking sides. The political arrangements made between the dominant parties had affected the neutrality of the institutions and their ability to regulate.

<sup>180</sup> *Piñata* is a decorated container filled with candy and toys suspended from a height, intended to be broken by blindfolded children with sticks and refers here to multiple thefts of state resources by the Sandinista government.

government focusing on institution-building and transparency-enhancing efforts.<sup>181</sup> The government created the National Integrity Committee (CNI) in March 1998, which was presided by the vice president of the Republic and comprised representatives of the different branches of government and Nicaragua's civil society. Its mission was to promote integrity and transparency at the national level, prevent and combat corruption, and promote values of honesty, civic pride and ethics within the citizenry. The government as such declared an ambitious slate of objectives, which were outlined in a participatory fashion in the PNI. Still, two years following the adoption of the PNI, the governmental office placed in charge of the plan was unable to show results other than the preparation of the plan itself.

The Alemán administration also promoted the ratification of the Inter-American Convention against Corruption (IACC) in 1999. It did so as a necessary manoeuvre to offer a positive political sign after the corruption scandals involving the president and representatives of his administration in the siphoning of international assistance provided to offset the havoc wreaked by Hurricane Mitch. The reality of the blatant practices of widespread corruption quickly showed that there was no will to make government decisions transparent or put an end to impunity in cases of corruption. Alemán finished his administration with a poor reputation and was accused both domestically and abroad of being a corrupt politician.

Impunity, nevertheless, is deeply entrenched in the system. It was not until 2002, with a new administration in office, that several of those accused of corruption from the Alemán administration were tried on criminal charges. Despite the action taken by the Office of the Attorney General of the Republic (PGR), the support of the government and the stance taken by several legal officials, after five years only former President Alemán is under house arrest. Furthermore, the magnitude of the problem of impunity in Nicaragua becomes even clearer considering the fact that the prison to which this sole individual convicted of corruption is confined is in fact the country. Alemán to date enjoys full freedom to move about and engage in political activity throughout the country as a result of the prison privileges he has successively been awarded. The extradition requests filed by the United States and Panama against the former president remain idle three years after they were submitted to the courts of justice.

When Enrique Bolaños took office, the Office of Public Ethics (OEP) was created. This new office was to absorb the CNI and take charge of the Office of Prior and Administrative Control and the Programme for Efficiency and Transparency in Procurement, two key reform initiatives pursued by the government. With this measure, the President increased the visibility of the entity charged with public integrity, as well as other broad responsibilities, albeit without the power to do so. After two years, the OEP had a low profile and fewer financial resources, even though it retained its status as the central authority in Nicaragua for the implementation of IACC<sup>182</sup> and UNCAC. The president offered personal support to the office but not financial or political support. In 2004, the organic design of the government changed (Manfroni, 2005): the OEP ceased to perform procurement functions, its large budget of USD 24 billion and budget coordination was transferred to the Ministry of Finance (MINHAC) and in the anti-corruption fight, the OEP would now report to the Secretariat of Communications of the Presidency (SCP).

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<sup>181</sup> In the late 1990s, this type of survey was being conducted by the Economic Development Institute of the World Bank in a number of countries in East Africa (e.g., Tanzania, Uganda) and in Latin America (e.g., Peru). These surveys sought to measure the perceptions of the public concerning corruption so as to discover the scope of bribery and identify where problems lay. The World Bank promoted the use of this information by governments in the construction of anti-corruption action plans. For further information on that period, see: <http://usinfo.state.gov/journals/ites/1198/ijes/pezzullo.htm>

<sup>182</sup> Inter-American Convention against Corruption. This international treaty, signed in 1996, unites 33 countries in the Americas.

The SCP was the body tasked with leading anti-corruption efforts and served as a liaison between the government and most DPs involved in this thematic area, in particular the Anti-Corruption Fund (AF), which will be further explained below.

### Legal and institutional framework

The anti-corruption legal framework used in Nicaragua is in general consistent with the basic international requirements established for the fight against corruption. The country has adopted international treaties and laws that focus specifically on anti-corruption measures, in addition to complementary legislation (see Annex II). The principal reforms implemented in recent years have included the enactment of laws on citizen participation, financial administration and probity and penal code reform. From an international perspective, the signature and ratification of the Organization of American States (OAS) and the United Nations (UN) anti-corruption conventions has been key.<sup>183</sup>

One of the more serious problems concerning these reforms has been their implementation. Many of these reforms are simply not considered to be worth the paper they are written on. The laws that have in fact been implemented suffer from shortcomings in their legislative design or from loopholes that prevent the objective for which they were originally intended in Nicaragua from being achieved. The difficult task of ensuring that new bills and reforms are signed into law does not seem to be duly rewarded by their actual implementation.

## 1.4 Main players

The faces of the main political actors in Nicaragua have changed over time. During the first phase of the transition (1990-1996), key players included the Violeta Chamorro administration, the FSLN, the unions, the army, the rebel groups and the businessmen who regrouped after the Sandinista period. This scenario changed during the second phase (1997-2001). With the PLC in office and the FSLN in the opposition, both became the most influential forces, together with businessmen and economic groups. Civil society was also a key actor and played an important role in how the public responded to each issue. During the Bolaños administration, businessmen took centre stage against the backdrop of the pact. Civil society continued to gain momentum at local and intermediate levels. When the new Sandinista administration took office in 2007, the political stage seemed further fragmented and there was some political reshuffling. Those in the business world who seemed the most consolidated included regionalised groups, financiers and traders. Sectors that focused more on the domestic market followed behind in second place. Civil society sought to maintain any ground gained.

### Civil society's lead role in whistle-blowing and advocacy efforts

Civil society organisations (CSOs) have denounced acts of corruption perpetrated by Alemán since the late 1990s and were a key force in having subsequent anti-corruption initiatives pursued. Once Bolaños took office and a more favourable climate was created, many CSOs cooperated with the new administration in promoting anti-corruption reform. Some CSOs were also born out of and grew as a result of the government programmes led by the SCP. This occurred in the case of the Movimiento por Nicaragua, which collected the 50,000 signatures necessary to strip former President Alemán of his parliamentary immunity. Nevertheless, some NGOs censored themselves

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<sup>183</sup> For further information, see the IACC Follow-up Mechanism (MESICIC) Round I and Round II Country Reports at [www.oas.org/juridico/english/fightcur.html](http://www.oas.org/juridico/english/fightcur.html). Another source that is useful in evaluating the quality and suitability of Nicaragua's legislation can be found at Ethics and Transparency (2006) at [www.noruega.org.ni](http://www.noruega.org.ni)

when they failed to speak out clearly against the blatant acts of corruption that occurred during the Bolaños administration. Nicaragua's civil society has changed over time and moved away from prolonged periods of enslavement by Somocista and Sandinista political forces to a period of proliferation at the start of the 1990s and one of institutionalisation as of 1999.<sup>184</sup>

#### The media – the dilemma between its mission and its independence

The press has been a key player in efforts aimed at whistle-blowing and transparency since the late 1990s. Only later did the televised media join the efforts underway in the fight against corruption. Investigative journalism in the print media and the quality of the information reported are still incipient, albeit improved. The most important media outlets are held closely by family-run companies and in some cases have clear party ties.<sup>185</sup> The main problems faced by these groups in exercising an independent role and one of oversight include the following, according to the Inter-American Press Association: i) the quality of the media and scant professional training in journalism; ii) the inability to apply constitutional law to accessing information; iii) the difficult financial sustainability of the media; and iv) political pressure. Those working in this field on reports of a sensitive or controversial nature may be subjected to acts of intimidation or extortion. In the past five years, two journalists have been murdered and many have received work-related death threats. Moreover, the media has also encountered a certain degree of censorship when scandals have broken that implicated powerful individuals with ties to the government or large economic groups.

#### Political parties – bipartisanship and representation in the AN

The number of active political parties has decreased over the years and currently there are two dominant political parties: the PLC and the FSLN. Despite this virtual duopoly in the political system, the political spectrum fragmented in the 2006 elections. The PLC divided and gave rise to the Liberal Alliance (AL). There was also a minor split within the FSLN, giving rise to the Sandinista Renewal Movement (MRS). These two new parties were born out of an active minority, thereby becoming a potential alternative, albeit marginal vis-à-vis the bipartisan landscape.

For more than a decade, a consensus was needed between the two main parties for any law to be passed.<sup>186</sup> Now, this consensus hinges on an agreement between the FSLN and a liberal party, the PLC or the AL, or the formation of an unlikely alliance between the latter two and a member of the MRS.

#### The executive – closer to *caudillismo* than institutionalality

The size of the government has decreased significantly and in less than two decades the number of civil servants has decreased to 27% of its original count (from 90,000 to 25,000 today). There is no stability in government employment and discretion in appointments is the general rule of thumb. A law on the civil service and another on municipal careers exist but neither has been put into practice. What is certain is that no stable alliances or political structures exist in Nicaragua to

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<sup>184</sup> Still, the change that has taken place has been passive and the nature of the change has varied: the weakness of unions and cooperatives and the growth of non-governmental organisations (NGOs), which total over 1,700, are of note.

<sup>185</sup> There are two national dailies, six TV channels and a dozen AM and FM radio stations.

<sup>186</sup> For example, the last electoral reforms agreed by Ortega and Alemán allow a candidate that has secured less than 40% of the votes to win the presidency in the first round if he or she has secured at least 5% more votes than the candidate with the second largest number of votes. This in fact occurred in the presidential election of December 2006, whereby the FSLN candidate triumphed with 38% of the votes.

promote the two laws. Nor are there public administration entities that show they are capable of assuming leadership in the fight against corruption. The entities that have taken on this challenge have had little impact and have seen their legitimacy erode away as cases of corruption come to light that involve members of their own governments and even their presidents. The weakness of some of the scant pro-transparency initiatives launched by the previous administration was shown once a new government that changed the rules took office. Today, a government policy of non-disclosure and government discipline prevails while the government also seeks to use cases of corruption involving the previous administration to mark a before and after in the country's history,<sup>187</sup> a familiar tune.

#### The judiciary – opacity and impunity

The CSJ has been an essential institutional actor in the emergence of the corruption seen in recent years. According to the words attributed to a former Supreme Court justice: “Any Nicaraguan who turns to the courts in search of justice with empty pockets is completely mistaken”.<sup>188</sup> All sources interviewed also indicated that the party politicisation of this judicial body has facilitated impunity and corruption. There is a precarious political balance within the CSJ between the FSLN (with five members) and the PLC (with four). At a lower level, the courts of justice comprise mostly Sandinista judges and magistrates. The CSJ has promoted several institution-building initiatives although the opaqueness of its actions has been preserved and strengthened. On the one hand, there has been no cooperation between the judicial branch and the government in prosecuting acts of corruption perpetrated during the Alemán period, nor in promoting joint anti-corruption policies or plans. And secondly, the CSJ administers the annual budget of the judicial branch, which amounts to 6% of the federal budget – a percentage guaranteed in the Constitution – in an opaque fashion. Furthermore, judges and magistrates have been appointed since 2007 at the utter discretion of the CSJ and without implementation of the judicial career law that was passed in 2003.

#### State oversight entities – non-existent coordination and dialogue

In addition to courts of justice, oversight bodies are indispensable. The mission of these bodies is to detect and investigate acts of corruption, as well as ensure disciplinary action and criminal sanctions. These bodies include the CGR, PGR and the MP.

The CGR is the government monitoring body par excellence. It has specific responsibilities in the fight against corruption, such as conducting audits and administrative investigations, overseeing the submission of asset and liability statements by authorities, demonstrating criminal responsibility and reporting cases of corruption to the MP. This oversight body has been in conflict with the PGR, the OEP and the Bolaños administration and its highest-ranking officials are decidedly politicised. Several members of its High Council express political opinions in the media and anticipate trials on issues that could be submitted for its authorisation or oversight. In turn, the role of the PGR is to represent the state. This body falls under the executive branch but operates independently. It has been the main force behind the anti-corruption criminal cases in question, conducting multiple investigations and building the case against Alemán. It is not able to take cases to court. Lastly, the MP is an independent institution within the legal system that is tasked with filing charges against suspected criminals and representing the interests of the people in a criminal court. This body has a monopoly on having criminal lawsuits heard and in terms of corruption, this monopolist status

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<sup>187</sup> Interviews with national experts, June 2007. See also a January 2007 publication on the implementation of a communication strategy entitled “Estrategia de Comunicación – Instalación – enero 2007”, which was attributed to the new administration and published by the newspaper La Prensa.

<sup>188</sup> Quoted at workshop with experts, Managua, June 2007.

enables it to decide which cases are to be brought before the courts. In recent years, it has remained in constant conflict with the PGR and the Bolaños administration as a result of the Alemán case.

### The private sector

This sector is noted as one of the country's leading sources of corruption (interviews, June 2007; Mayorga, 2007). Cases of corruption in areas teetering on the line between private and public activity, such as privatisations, bank bankruptcies and liquidations, economic activity regulation and government contracting, have been especially numerous. In recent years, the different administrations have implemented policies to create conditions that increase the influence and development of private enterprise. The private sector has leveraged spheres of participation and influence as needed<sup>189</sup> even though it has not participated in anti-corruption initiatives or supported large-scale transparency projects.

### Development partners (DP)

In Nicaragua, the presence of cooperation agencies has increased and diversified over the past fifteen years. The contribution of external cooperation in terms of donations and loans has been essential to Nicaragua's survival. At least 31 agencies are present in the country, not to mention the NGOs and groups offering horizontal cooperation that exist as well. Cooperation has become extremely important in the administration of the state given its total financial volume and the fact that it accounts for 36% of the annual federal budget. Despite the fact that at the moment the amount of support received as a percentage of GDP has decreased since the early 1990s (to review the annual amounts received each year since, see Annex III), it accounted for 27.1% of GDP in 2004 according to the Organisation for Economic Co-operation and Development (OECD),<sup>190</sup> and is quite significant given its per capita assistance level: USD110 per capita in 2000 and USD 103 per capita in 2006.<sup>191</sup> Bilateral cooperation is led by the United States and Japan, followed by the territory of Taiwan. The European Union, the Inter-American Development Bank (IDB) and the World Bank are notable sources of multilateral cooperation.

DP resources have shifted their thematic focus over time. Initially (1990-1996), cooperation centred on a post-conflict agenda: pacification and democracy. During a second period (1997-2001), new areas of focus were added. Municipalisation and local development gained greater importance in all their derivatives. Actions were stepped up to strengthen the rule of law and the integrity of public administration. Support for the Office of the Ombudsman for Human Rights (PPDH) and the CSJ and PGR (for further details, see Annex IV) was also strengthened. Moreover, a division of labour and thematic synchronisation of international cooperation can also be observed. The inclusion of governance-related efforts on the national political agenda, and as part of commitments undertaken by the government and DPs, began in 1999.

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<sup>189</sup> Some 12 chambers of commerce fall under the umbrella of the High Council of Private Enterprise (COSEP). The chambers are grouped into the following sectors: industry, commerce, fishery, construction, professionals, small and medium-sized enterprise, agriculture and livestock, tourism, non-traditional exporters, food and vehicles. The chambers are associated above all with sections of the domestic market. The financial sector is a member of the Association of Banks.

<sup>190</sup> Cited by UNDP (2007).

<sup>191</sup> Compared to USD 57 in Bolivia and USD 39 in Malawi, countries with a very similar Human Development Index.

## 2 The facts of anti-corruption policy making

This section describes the origin of the anti-corruption initiatives that emerged during the period 2000-2006, important elements in their design and implementation, the existence of other attendant government reforms, contextual factors that facilitated or hindered the implementation of the initiatives and a brief account of their outputs after seven years. This section is based on interviews with valuable key players and experts on the reality of the situation in Nicaragua, as well as documents prepared by the government, international organisations, development cooperation agencies and NGOs. Most references focus on the Bolaños era as it represents the full cycle of policies that can be undertaken by a government. Nonetheless, sight is not lost of the final stage of the Alemán administration, which offers valuable insight into the types of public decision made and the reasons for doing so.

### 2.1 Origin and rationale of the National Integrity Plan (PNI)

The corruption scandals that shook the nation in the late 1990s and in early 2000 occurred within administrations that before the public and the international community must take charge of prosecuting the accused, who are their own party supporters or in some cases, their presidents in office. These governments did not have robust internal oversight mechanisms or institutions in place while other government bodies were in a vulnerable position vis-à-vis their political parties.

#### Catalysing factors

The Bolaños administration took office in 2002 against a social backdrop marred by the citizenry's and the international community's lack of trust in Nicaraguan institutions and tarnished by the string of corruption scandals linked to the previous administration. In this context, in order to access funds to execute its government programme the Bolaños administration needed to rebuild the country's relations with the international community and show the international bodies and agencies that they could trust the government (interviews, June 2007). *"We face an international community that is tired of supporting Nicaragua due to mediocre results, the fact that Nicaragua has failed to make good on some of its commitments and on account of corruption... Another cost of corruption has been that the people do not have trust in their institutions. My mission is to instil trust"*, said President Bolaños<sup>192</sup> 100 days into his administration. In addition to this presidential assessment, Bolaños sought to be remembered as the best president in the history of Nicaragua (interviews, June 2007) and some anti-corruption measures seemed to have been driven by this personal political desire.

Furthermore, and more significantly, Bolaños needed to secure a certain level of social support to strengthen him politically in the early days of his government.<sup>193</sup> The anti-corruption agenda was one way ties could be established with NGOs devoted to citizen participation and the fight against corruption. In Nicaragua, these types of organisation had legitimacy and were trusted by the population due to their active social endeavours, particularly in the wake of Hurricane Mitch and their growing civic awareness-raising and advocacy efforts in multiple areas. An anti-corruption agenda represented an opportunity for the government to become equipped with the social support that it lacked.

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<sup>192</sup> National Address, 21 April 2002.

<sup>193</sup> Politically he did not enjoy support in the AN and the CSJ, CGR and MP were politicised party-wise. Bolaños himself was a leader without much political experience and his administration did not have a social support base and was unable to count on the drive of the other branches of government.

## 2.2 Design of explicit anti-corruption initiatives

As noted, anti-corruption initiatives were designed during both the Alemán administration and that led by Bolaños. What has been widely questioned has been the actual political will of these governments to put them into practice. No governmental action in the first case had any result and the initiatives promoted by the latter have been considered insufficient and inefficient.

Looked at from another standpoint, the design of the PNI was built from a structured mechanism. The alignment of government and external objectives as well as the use of technical instruments to order policy processes were promoted by DPs to strengthen institutions and were utilised by those responsible for anti-corruption policies in order to secure resources. Government officials used the National Development Plan (PND) and the SGPRS, as well as survey results, to underpin the objectives of the plan, which were brought into line with the practices and procedures of government-DP relations in order to build the PNI. The government involved stakeholders formally or subsequently by way of participatory mechanisms, such as the National Council for Economic and Social Planning (CONPES).<sup>194</sup>

### Process and stakeholder involvement during the Bolaños administration

The PNI was conceived as a government initiative and later became known as the Anti-Corruption and Governance Strategy and Plan. This effort was undertaken by the SCP in 2002 and 2003. Once the government finalised its content, the PNI was presented to CONPES, an advisory body to the president that draws together political parties, private enterprise and civil society. The recommendations offered by this consultative body were not included by the government in the final document. Still, it at least allowed non-institutional actors access to this government guide.<sup>195</sup>

Once accepted domestically, the government presented the PNI to the DPs to secure resources to implement it. The proposal was taken to the so-called Governance Roundtable, the most clear-cut forum for liaising between the government and these actors and henceforth with civil society. Both CONPES and the development partners attended the periodic meetings of this roundtable coordinated by the SCP. This body enabled the government to maintain a flow of information with these actors while the design and implementation of the anti-corruption initiatives were underway.

The NADid not play a role in that stage of the design. It was later, during the implementation of the initiatives, that the legislative body became very much a part of the political debate. The reforms related to the anti-corruption agenda often translated into government bills.<sup>196</sup> Debates brewed within the AN and multiple CSOs insisted on participating in the discussion and accessing the legislative committees, which was an atypical occurrence. The political parties were not directly involved in the PNI forums for dialogue. They acted indirectly through CONPES and via the participation of their deputies in the AN. The FSLN and PLC also acted via the opinions issued by the executives of the state institutions that they controlled. Last, although no less important, neither

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<sup>194</sup> This body is established under the Constitution and its objective is to facilitate the participation of civil society organisations in the decisions and formulation of public policy by consulting on and presenting proposals to the president of the Republic. Despite its notable activity, this body has not been able to overcome its political fragility.

<sup>195</sup> According to an IDB report, “Nicaragua’s national integrity plan presents objectives, includes policies (comprehensive prevention, legislative development and institutional building in the country) and implementation strategies and anticipates the development of five programmes. It does not outline indicators that can be measured, nor targets, timelines or budget allocations. The initiative is more a statement of policies than a plan” (IDB, 2004).

<sup>196</sup> The main projects were related to civil servant probity, citizen participation, a financial administration system for the state, access to information and penal code reform.

the CSJ and MP nor the CGR were involved in the design of the PNI given the distance between these bodies and the government on account of the Alemán-Ortega pact. Nor did the government involve the private sector in the plan's design.

### Knowledge base

The Bolaños administration designed the PNI without preparing any up-to-date assessments or studies regarding the most prevalent practices and areas of corruption. It used the PNI from the previous government (prepared under the direction of the former vice president who would later become president). It took into account general indicators on corruption, a report commissioned early on in the previous administration by the World Bank, and the results of a second opinion survey on the perception of corruption in 2003.<sup>197</sup> Of note is the fact that President Bolaños had tasked the OEP with the development of an outline of the state's institutional weaknesses, which was never produced. The source of information used was essentially a national survey and exogenous general assessments.

### Content and priorities

The objective of the PNI remained the same during both administrations. It sought both gradually and systematically to confront and reduce the causes and instances of administrative corruption and attendant practices. Its aim was to do so using community participation mechanisms to incorporate civil society effectively into the process to ensure that, via cultural change, public administration would be practised transparently and efficiently on an everyday basis. The means to this ambitious end were similar in both administrations. The specific objectives established in the PNI implemented under the Bolaños administration included improving the quality of services and ensuring full observance of the rule of law, establishing an appropriate normative framework for transparency, tailoring the administration of the state and promoting the participation of civil society, establishing effective prevention, training and sanctioning mechanisms, and lastly, promoting access to information and a culture of group ethics. The plan proposed three fundamental policies: comprehensive prevention, regulatory development and institution building. This ambitious plan developed these objectives into lines of action and included a strategy and programmes for their implementation.

The PNI of 2003 established both short- and long-term objectives. The former intended to streamline the transfer of budgetary funding to the municipal level, recognise citizens' rights to access information, implement a government procurement system and reform criminal procedure. Those of a long-term nature sought to institutionalise access to information, citizen participation and dialogue, benchmarks for government performance, complaint and demand procedures, and the professionalisation of the civil service. The government also proposed cross-cutting objectives related to implementing strategic communications for anti-corruption and governance measures, implementing a strategy for measuring transparency in the public sector and involving young people in the anti-corruption process.

The PNI implemented under Bolaños was supported principally by the Joint Donor Anti-Corruption Trust Fund,<sup>198</sup> notwithstanding the fact that a number of its components received funds from other DPs. Components such as judicial reform, civil service reform, a procurement system and budgetary transfers were financed with credits from the World Bank and the IDB, as well as from bilateral cooperation agencies. Nearing the end of the Bolaños administration, the SCP presented the DPs

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<sup>197</sup> CIET International was commissioned by the SCP to conduct this survey, whose sample included 6,000 households and was financed by the AF.

<sup>198</sup> Also known as the Anti-Corruption Fund (AF), comprised by Norway (coordinating country), Sweden, Finland, the United Kingdom, Germany, Denmark, Switzerland and UNDP.

with a new anti-corruption strategy for the period 2007-2011. This new strategy was essentially a continuation of the previous one and its debate was wisely postponed by the DPs until after the presidential elections.<sup>199</sup>

## 2.3 Provisions for implementation

### Roles and responsibilities

The implementation of the PNI was mainly incumbent upon the SCP and MINHAC. A solid majority of the plan's initiatives, particularly those that aimed to promote public ethics within the government (which were initially implemented by the OEP), citizen participation, transparency in public administration and the measurement of corruption (SCP), budgetary transparency, civil service and public contracting (MINHAC) and to strengthen decentralisation (Ministry of the Interior), were included within this scope of responsibility.<sup>200</sup> These bodies were coordinated within the executive, although, unlike MINHAC, the SCP did not have any legal authority to impose its measures.

Other ministries and entities, such as the PGR, the national police, and the ministries of health, education and justice, also undertook part of the PNI. In this area, two bodies stand out in terms of the implementation of the plan. The PGR strengthened its investigative capacity in crimes of corruption and monitoring procurement and contracting activities. In recent years, the national police, in turn, has demonstrated its ability to collaborate in the fight against corruption and shown the political will to tackle corruption within its own ranks.<sup>201</sup>

### Monitoring and communication

The main body in charge of monitoring the PNI and communications regarding the plan was the SCP. This body disseminated the plan within the government and liaised between the government and DPs and civil society. The SCP had to secure information from other ministries and public offices regarding the execution of the plan and report to the AF using previously agreed on indicators. The DPs insisted that PNI quantitative and impact indicators be used, an effort that proved unsuccessful.<sup>202</sup>

The media was a key partner in the dissemination of the various initiatives promoted by the government and CSOs, as well as the statements made by different political parties and leaders on

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<sup>199</sup> This new strategy focused its efforts on reaffirming three areas: a) public administration; b) the legal system; and c) relations between governing leaders and the citizenry. It did not include any evaluations or use a theoretical framework. The DPs convened to learn about this new plan decided that after ten years of commitment to anti-corruption efforts in Nicaragua, it was time to evaluate the state of affairs prior to making any decisions.

<sup>200</sup> This two-pronged approach was replicated with the budgetary support fund initiative, which encompasses DPs that help finance the national budget.

<sup>201</sup> The police has shown itself capable of fulfilling its duties in collaborating with the justice system despite the climate of corruption prevailing among other entities within the legal system. Its political will to implement internal anti-corruption actions has been highlighted by the press and CSOs, most notably in 2006, after a new commissioner was brought in to head the force.

<sup>202</sup> The AF development partners saw difficulties on the part of the SCP in securing the raw data needed for the indicators, both due to the absence of integrated information systems and institutional weaknesses in processing and delivering information from the Norwegian Agency for Development Cooperation (September 2006). Also during interviews with experts. June 2007.

each reform. Some NGOs also helped to promote a broader-based political and technical debate.<sup>203</sup> Oddly enough, the PNI had set forth that the SCP implement a communications strategy, which never materialised. Near year-end 2006, the SCP made a late attempt to carry out a smaller-scale dissemination effort.

The SCP used surveys to measure corruption. Although the government could not ignore the most well-known indicators on corruption (e.g. TI's CPI and the World Bank's GAC), its evaluation efforts aimed to examine the citizenry's perception of corruption. Surveys were conducted in 2003 and 2006 among thousands of households and focused on five types of government body that provided services to the public.<sup>204</sup> The evaluations, however, did not take into account large regulators or bodies that granted concessions or decided on large investments or financial activities. This omission on the part of the SCP may have been strategic as the focus of the fight against corruption enabled this office to escape larger-scale political awkwardness in areas in which a risk of a high level of corruption clearly existed.

## Resources

The Nicaraguan government entities whose permanent objective is to fight against corruption (CSJ, CGR, PGR, MP) are funded by law under the annual budget law. In addition, they have access to financial support provided by DPs when institution-building and anti-corruption programmes must be financed.

The offices created under the Alemán and Bolaños administrations received ongoing financial support from DPs. The AF supported the government's anti-corruption priorities year after year with a total of USD 3 million during the period June 2002-November 2006.<sup>205</sup> These funds were primarily allocated to support PNI initiatives overseen by the SCP. Although the PNI was presented in its final form in late 2003, it first completed a 12-month pilot phase financed by the AF with USD 500,000. Following that phase, the remaining resources for the first phase, the bridge phase and a second phase were disbursed up to 2007.

Furthermore, in March 2004 the World Bank announced the approval of a USD 23.5 million credit for Nicaragua, aimed at enhancing the efficiency, productivity and transparency of its public sector. "*Improved governance will also attract private investment, which in turn, will generate increased economic growth and reduce poverty*", the group stated on that occasion.<sup>206</sup> The project was geared toward supporting the anti-corruption efforts undertaken by the government by promoting good governance and institutional development, fundamental pillars of the SGPRS. In turn, the United States Agency for International Development (USAID), which does not participate in the AF, has invested approximately USD 9.4 million in the fight against corruption over the past three years through its transparency and rule of law programmes.

And recently the new Democratic Governance Fund (FGD),<sup>207</sup> in its first call for funding proposals, allocated USD 2 million for 26 projects undertaken by CSOs. Lastly, 27% of the annual funds that

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<sup>203</sup> Particularly noteworthy are the efforts of Hagamos Democracia, an NGO working to strengthen democracy, in legislative monitoring and those of the Violeta Barrios de Chamorro Foundation in promoting the right to access information, as were those put forth by the Access to Information Law Support Group.

<sup>204</sup> Legal, Health, Education, Police (issuance of driver's licences) and City Halls.

<sup>205</sup> AF Presentation, Embassy of Norway, 16 February 2007. For further information, see <http://noruega.org.ni>.

<sup>206</sup> Press release no. 2004/285/LAC. World Bank.

<sup>207</sup> This fund is the result of a joint initiative undertaken by the Royal Embassy of Denmark, the Embassy of the Kingdom of the Netherlands, the Swiss Agency for Development and Cooperation (SDC), the UK Department for International Development (DFID), the Embassy of Norway and the Embassy of Finland.

make up the World Bank's portfolio for Nicaragua have been geared toward reform and modernisation of the public sector and various anti-corruption initiatives. In summary, the financial resources offered by DPs have been broad-based and government entities have been able to access this funding without any major difficulty, barring a few exceptions.<sup>208</sup>

### 3 Analysis

The Alemán administration had no intention at all of fighting corruption and the strategy pursued by Bolaños failed to develop into a genuine anti-corruption public policy. In turn, there is consensus among qualified informants (interviews, June 2007) that Bolaños's strategy consisted merely of a series of sector-wide initiatives outlined by the government and given financial and technical assistance by the international community, which constituted a condition upon which receiving political and economic support hinged.

As for Bolaños, furthermore, other signs clearly support this conclusion: the strategy was essentially implemented without the use of government resources; it drew on surveys of corruption and not assessments or reliable studies on the nature or actual magnitude of corruption in the country; it used insufficient tools for combating corruption; and finally, the government did not demonstrate political will in the area of anti-corruption efforts when officials within its own administration were accused of corruption – and even worse, the President appointed them as ministers to give them immunity.

In summary, the fight against corruption was used to conceal practices of illicit enrichment occurring within the Alemán government and as a strategy of political struggle by the Bolaños administration. The following sections will analyse several factors deemed decisive in the evolution of anti-corruption policy initiatives, particularly over the past five years, a period in which an attempt was made by various actors, both governmental and non-governmental, to create a policy process from which lessons could be learned.

#### 3.1 Contextual factors that favoured or impeded anti-corruption policy making

In its beginnings, the Bolaños administration considered the lack of credibility of public institutions and the government within the national and international community a major challenge to be addressed. The anti-corruption flag was timely and Bolaños took it up in order to send the right signal to DPs.

At the same time, the highly polarised political agenda influenced the types of government decision made. The fight against corruption was and is used as a political weapon. Since corruption in Nicaragua is systemic, each administration is the prey of the next.<sup>209</sup>

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<sup>208</sup> On one occasion in 2003, the CSJ and AN, which can now access several specific funds, were denied access to funds provided by the United States. This measure was justified by USAID citing an inefficient legal system and institutions being manipulated as a result of the pact. For further information, see [www.usaid.gov](http://www.usaid.gov)

<sup>209</sup> During the time period in which the interviews were being conducted, former President Bolaños was facing charges of corruption in a case involving illegal immigrants while his former finance minister was accused of illicit enrichment totalling millions via bank liquidations. History seems to have repeated itself.

The past few Nicaraguan governments have lived in a permanent dichotomy in their areas of policy. On the one hand, these areas have pivoted on economic and institutional reform and adjustment while social issues and development have been given secondary importance and addressed with development partners. The government's anti-corruption agenda did not escape this fate. It was used as an umbrella to bring coherence to a series of structural reforms to be undergone by the administration and to also to step up the efficiency of public services the effectiveness of which affects users/citizens across the board. Government speeches from that period did not coincide with the action taken. In fact, initiatives for state reform developed through a slow, steady process while the areas of participation and the fight against corruption were pursued in an episodic, tenuous manner.

### 3.2 Main drivers and opponents of change

Nicaragua's political conflict dominated all branches of the government as a result of the pact. Consequently, the Bolaños administration had only the support of the PGR, which was strengthened institutionally by the initiatives pursued by the government and DPs. The administration met opposition in the NA (except early on, when any friction was overcome through agreements with the FSLN), the CGR, the CSJ and the electoral body.

No broad-based agreement, inter-branch effort or state policy existed. The government promoted reform and created an anti-corruption agenda. It was not, however, able to build consensus. Other state entities undertook their own plans and programmes, as well as their own institution-building initiatives.<sup>210</sup>

The implementation and actors involved in the process

Key actors in the implementation process included the PGR, the media, the SCP and NGOs. Unfortunately, these entities lacked the authority and power to make commitments undertaken within the government mandatory. The nature of a body such as the SCP requires permanent political support from the president to promote anti-corruption actions and lacks power within ministries and executive bodies that may be reluctant to implement PNI measures.

*Civil society and the media are essential driving forces behind an anti-corruption agenda*

The press and NGOs have led demands for transparency (interviews, June 2007). Although the church did speak up, as did several political parties briefly, when acts of corruption under the Alemán administration were reported, the collective demand for transparency has been promoted and communicated by the press.<sup>211</sup> Only in recent years have televised media joined in the pursuit of transparency and investigative journalism, which remains incipient. Consequently, the media and the freedom of information have become key issues in Nicaragua's political arena.

Civil society includes well known organisations that promote transparency in elections, access to information, public administration efficiency, public probity, citizen participation and social control.<sup>212</sup> In the fight against corruption, an implicit strategic alliance has been formed in

<sup>210</sup> This reality becomes even that much more striking in the case of the CSJ and universities, both of which receive 6% of the national budget irrespective of their performance or the level of expenditure required for them to perform their duties. The executive is unable to do much to monitor this 12% of the budget since these institutions are not subject to the principle of accountability.

<sup>211</sup> Investigative journalism in Nicaragua is incipient and engaged in by press journalists.

<sup>212</sup> The following organisations have had a lead role in developing a transparency agenda: *Ética y Transparencia*, *el Movimiento por Nicaragua*, *La Fundación Violeta Barrios de Chamorro*, *Hagamos Democracia*, *Fundemos* and *IPADE*, *inter alia*.

Nicaragua between NGOs and several media outlets, which has produced positive outputs. The CSOs have leveraged informal mechanisms and have strengthened formal mechanisms of participation, such as CONPES.<sup>213</sup> As frontrunners in anti-corruption efforts, the CSOs implement initiatives aimed at transparency and participation at the local and national level.

#### *The PGR as a spearhead for the government*

The government used the “fry the big fish” approach to eliminate its opponents. The deliberate act undertaken by the government to use the PGR to chase down former high-level officials and Alemán himself earned the administration support from the public initially. This action was complemented by the creation of the PNI, which enabled the government later to access the financial resources it needed to undertake a legislative and public agenda that would increase its political strength.

#### *Cooperation agencies as driving forces of change*

Some believe that the pressure of development partners added to the nation’s demand for transparency and that as a result of this pressure, the Alemán and Bolaños administrations promoted anti-corruption measures. It is also believed that their reforms were merely cosmetic. Nevertheless, this does not detract from the fact that cooperation agencies pushed the two administrations into making decisions that forced them to undertake legal reforms and administrative initiatives. In any event, DPs encompass a diverse group of international bodies and the demand for anti-corruption measures came in different shapes and sizes.

#### *The Secretariat of Communications of the Presidency as driving force behind coordination efforts*

The SCP represented the government vis-à-vis other state agencies and development partners. Furthermore, it liaised directly with the OEP and other agencies within the executive branch and had multiple partners throughout the government. MINHAC was one such partner, as was the economic cabinet in general (interviews, June 2007). The objectives of the government bodies tasked with the structural reforms promoted by the World Bank and the IMF were closely aligned with those of the SCP, which had been placed in charge of the anti-corruption agenda.<sup>214</sup> Consequently, the government itself incorporated the conditions into the governance matrices agreed with the IMF. This meant that several government actors sought to make the state’s self-commitment coincide with the political will of the government in areas linked to institution-building and integrity plans.

#### Actors opposed to the government’s anti-corruption and pro-transparency efforts

The main political parties in the country, the FSLN and the PLC, were opponents of the Bolaños administration and its anti-corruption strategy. The pact ensured that institutional designs were at the service of political leaders.

The CGR, MP and CSJ also acted in opposition to the anti-corruption initiatives put forth by the Bolaños administration. The party ties of these entities ruled out any potential collaboration in the investigation and sanctioning of notable cases of corruption. The CSJ has been cited by multiple

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<sup>213</sup> This body must remain at the forefront permanently given its advisory capacity as well as its representative nature. Even though it is guaranteed in the Constitution, the impact of its proposals is not. CONPES has had the opportunity to access valuable information for civil society, has carried out efforts to coordinate with the Secretariat of the Presidency and actively participated in the Governance Roundtable held in 2005 and 2006.

<sup>214</sup> The experts agree that, for example, the conditions imposed by the IMF were essential to incite the AN to pass a federal financial administration law.

sources as the entity in greatest opposition to transparency measures and the stopcock on justice in Nicaragua (interviews, June 2007).

The NA was chiefly composed of the FSLN, headed by Ortega, and the PLC, headed by Alemán, during both administrations. Enrique Bolaños lacked party support for his legislative agenda and only managed to seal a few agreements with the FSLN until it renewed its pact with Alemán in 2002. He later faced a legislative body that was unreceptive to his anti-corruption initiatives. Many times laws were only passed if they contained legal loopholes or workarounds.

### Important actors in Nicaragua absent in anti-corruption efforts

The private sector and the Catholic Church have not been directly involved in the anti-corruption initiatives pursued in the country despite the economic power enjoyed by the one and the political and moral authority of the other. This runs counter to the fact that the line dividing public and private sectors regulated by the government is pointed out as the prime hot spot for corruption in Nicaragua. Most of the success enjoyed by the groups holding economic power in Nicaragua is, in the words of a former finance minister who served under Violeta Barrios, more ascribable to “dominating a market and operating a concession while enjoying monopolist privileges than their strategic skills. The capital gains derived by these groups from their high levels of profitability and growth are owed to the fact that they have successfully sold their privileged positions within the market” (Mayorga, 2007). Further to this assessment, the most well known cases of large-scale corruption exposed in recent years have involved high-level public authorities and businessmen with close ties. These cases have hinged on irregular practices in the privatisation of public companies, fraudulent bank bankruptcies and illicit enrichment.<sup>215</sup>

## 3.3 Rationale and political underpinning for the choice of policy option

A major part of the anti-corruption policy option was owed to the political conflict faced by Bolaños vis-à-vis former President Alemán. The PGR was instructed by the Bolaños administration to eliminate this political competition within the PLC and at the same time send a positive political message. The political discourse directed toward the citizenry announced the arrival of a new era, free of corruption.

Another pivotal aspect of the policy was the structural reform of the state. As a result of the definitions of government development and in accordance with the postulates posited by leading IFIs, efforts to downsize the state and its role as a driving force in the economic growth created by private investment were continued. This area provided support for the policy option via standardised technical processes promoted by DPs. The Bolaños administration followed a PND that served as the government’s main political framework for the formulation of its policies and anti-corruption strategy, which was anchored in the PNI of 2003. The strategy drew on the previous administration’s plan and took into account the findings of a new opinion survey (2003) on corruption. The political discourse directed toward the development partners ensured the deepening of reforms already underway and the reliability of the government.

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<sup>215</sup> In addition, key power players and their political arms have promoted a regressive, exclusive taxation regime to exempt them from the payment of taxes in the amount of approximately USD 400 million annually.<sup>215</sup> This figure is equivalent to all foreign assistance received by the country annually (interviews with national experts, June 2007).

### 3.4 Role of development partners

Various development partners were decisive actors in promoting political will and designing anti-corruption measures under the Bolaños administration, as well as in implementing some of these measures. These DPs have promoted the formulation of anti-corruption measures and plans by offering contingent cooperation, engaging in diplomatic pressure and providing technical assistance. Experiences in this area have been bittersweet. In the late nineties, multiple DPs and IFIs (World Bank, IDB, EU and USAID to name a few) supported the themes addressed in the government's discourse with credits, donations and technical assistance aimed at institution-building and state-reform initiatives in a Nicaragua that was still in transition.<sup>216</sup> Nevertheless, the results obtained with those resources and levels of debt were handled with very little transparency. Some years later, with the country in greater debt and DPs more cautious, the latter saw a new opportunity in the Bolaños administration. Interaction between the DPs and the government took place at the Governance Roundtable. This forum for dialogue aimed to improve the efficiency of development partners in governance-related areas that was part of the harmonisation efforts for cooperation in which Nicaragua was a pioneering country. Despite this step forward, one drawback was the late incorporation of CONPES into this body. Unfortunately, the government did not take consensus with civil society to the table, nor did DPs make efforts to deepen civil society's participation in this dialogue forum.<sup>217</sup>

The execution of government plans has required substantial cooperation resources. Contributions furnished primarily to the SCP and PGR by the AF ensured that those bodies were flexible enough to sustain themselves and coordinate actions. The IDB and the World Bank granted successive credits to ensure the continuity of the state-reform initiatives while bilateral agencies complemented several of the PNI's lines of action. It can moreover be stated with the utmost certainty that without the financial support of DPs, no CSO would be combating corruption in Nicaragua, which is a significant achievement given the role that has been played by the CSOs in heading up transparency and anti-corruption projects.

#### Coordination among development partners

Since 2002, the AF has been helping the government to strengthen the PGR in areas related to investigation, reporting and procurement, and the SCP in measuring perceptions of corruption, financing communications initiatives,<sup>218</sup> promoting access to information and strengthening citizen participation.<sup>219</sup> The AF provided technical and financial support for the design and implementation of the anti-corruption measures contained in the PNI. In order to evaluate the disbursement of financial support, periodic monitoring is conducted using indicators on which the government must report.

Another coordination initiative is the FGD, which seeks to consolidate democratisation, institutionalisation and citizen participation efforts in Nicaragua and aims to strengthen the capacities of civil society organisations and networks in engaging in dialogue and interacting with public actors. This initiative emerged only recently in 2006 and its results cannot yet be evaluated.

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<sup>216</sup> Speech by President Alemán (IDB, 1999).

<sup>217</sup> Other sector-wide initiatives or others deriving from civil society have been supported by cooperation agencies under the policies and specific objectives of each agency.

<sup>218</sup> Such as the campaign "Love your country, let's put an end to corruption", carried out in 2006. USAID supported this initiative through its transparency programme.

<sup>219</sup> It also included support for the Financial Analysis Commission, which never materialised due to budgetary management problems on the part of the government. These budgetary problems prevented the government from receiving funding for a state agency developed to play a central role in preventing and detecting asset laundering.

Despite the AF's positive operations and initial positive reactions to the FGD, the facts show that an exchange of information on planning and evaluation does not normally occur among DPs.<sup>220</sup> Several meetings have been held between the AF and USAID to exchange information since the latter is not a member of the AF or the FGD, yet USAID has provided significant sums for transparency initiatives (particularly in late 2005 and in 2006). Furthermore, the different DPs customarily hold meetings to discuss initiatives that are funded jointly even though no coordinating body or regular exchange of information is established.

### Several difficulties faced by development partners

The various DPs face uncertainty regarding the sustainability of the governmental measures given a climate characterised by fragile agreements and a high level of discretion on the part of political *caudillos*. Moreover, many times they face a prisoner's dilemma whereby decisions are made with highly asymmetric information, hoping for second best at the end of the day. Another difficult area to navigate is the challenge of managing the complex relationships between development partners.

A study of the difficulties faced by DPs<sup>221</sup> indicated that it is common for some agencies to go to the table in defence of their cooperation package and that there is no straightforward, accessible way to know whether the objectives and activities of various donor programmes and projects are aligned with those pursued by the government. The study also found that DPs do not adapt to cycles in government and that only a few multi-year agreements between the government and DPs exist. It further noted that a low percentage of DPs engage in delegated cooperation, that the coordination of technical assistance is inadequate, and that most agencies do not offer incentives sufficient to motivate their agents in the area to promote harmonisation. Civil society is dissatisfied with its participation at the roundtables and has stated that the aid provided by DPs affects its policy definitions (interviews, June 2007). The CSOs also note an absence of coordination and cases where there is competition among DPs, as well as redundancies and incompatibilities in some anti-corruption areas. Furthermore, the CSOs have detected weak transparency on the part of DPs in disbursing financial resources.

## 3.5 Interplay with related governance reforms and associated actors

Many of the anti-corruption initiatives implemented during the Alemán and Bolaños administrations were closely related to other governance reforms. Still, despite the fact that the economic and social reform as well as the policies of modernisation and state reform were designed to strengthen the market and international trade linkages, these governance reforms were exogenous, as were most PNI initiatives. The PND and the SGPRS were linked to conditions established by the consultative groups,<sup>222</sup> particularly in the wake of Hurricane Mitch in 1998 (CINCO, 2005). The same situation occurred with the decentralisation and local development policy and the citizen participation policy. A large number of sectors of civil society feel that the policies do not necessarily address the demands and interests of social actors but rather the conditions of the economic reform.

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<sup>220</sup> In Nicaragua, some valuable initiatives aimed at donor alignment and harmonisation are being adopted even though anti-corruption efforts are recent. The country is a pilot for the Education-for-All initiative and multiple DPs have been working since 2005 in the area of coordination, providing budgetary support to the government under the Joint Financing Arrangement (JFA).

<sup>221</sup> Analysis of the difficulties faced in harmonising international aid in Nicaragua (IDB, 2004).

<sup>222</sup> Consultative groups are meetings at which the IC agencies discuss with a country or region the terms of their cooperation, which is contingent upon certain commitments to be undertaken. The consultative groups most relevant to Nicaragua during the period studied were the Washington (2000), World Bank and IMF (2000) and Managua (2003) meetings. The use of coordination roundtables as a principle mechanism for the coordination of cooperation and in an attempt to harmonise norms and procedures was agreed at the latter.

Secondly, in terms of anti-corruption measures the PNI put forth by Alemán and the successor put forth by Bolaños contain strong, unfortunate elements of continuity. Given that the first PNI drew on a series of assessments and conjectures provided by the international community and assumed to be appropriate by the second government, the anti-corruption agenda has an exogenous origin that fails to address national demands. The relationship between and relative coherence of the governance reforms in Nicaragua is attributed to the external consensus and the weakness of the national institutions. It may be said, then, that the PNI aimed to meet the longer-term objectives of a number of DPs, objectives that were pursued depending on the political interests, criteria for action and technical capacities of the government officials in office.

### 3.6 Factors that facilitate or hinder implementation

#### (-) The pact was the greatest political obstacle to the PNI

The pact undermined the reach of the anti-corruption initiatives and their actual implementation. The constitutional reforms of 2000 and 2004 configured a new political regime that has been characterised by the control of the FSLN and PLC over the branches of the government and the political system in general. PNI implementation was government- and not state-oriented, which made it difficult to achieve reform in areas where there must be collaboration between the NA and other key state entities in the fight against corruption, such as the CSJ and MP. Even within the administration itself, the reach of the pact made it difficult to adhere to anti-corruption.

#### (-) An exogenous model limited opportunities for action and created contradictions

The implementation of the PNI suffered from the effects of a design based on exogenous models. First and foremost, the ability to implement the plan was compromised from the start due to the type of body selected to execute the government's anti-corruption public policy (CNI under Alemán and SCP under Bolaños) and later due to the policy itself, which was based on apparent successes from elsewhere (integrity committees and integrity plans) and implicit (such as the state-capture theory). Secondly, those executing the PNI measures were unable to take on a plan in which they had not participated and whose underpinnings they were not familiar with. Lastly, the same model enabled contradictory aspects to compound one another: the fight against corruption was handed over to a fragmented civil society while vast resources were constantly poured into state reforms.

#### (-) The lack of assessment allowed for substantial discretion in policy measures

Corruption databases were entirely insufficient. This had a negative influence on the use of resources and the targeting of efforts and expectations created. In addition to the government failing to apprise itself of information on its risks and weaknesses, several important aspects concerning corruption in Nicaragua were not given centre-stage status in the anti-corruption fight against corruption: judicial corruption, privatisation, the corporate practices of financial and business groups, influence peddling, tax exemptions for the wealthiest segments of the population and legalised corruption. Surveys were used to validate decisions already made and to fight – albeit with marginal effect – against a number of sector-specific corrupt practices.

#### (-) An absence of leadership and a low capacity for coercion in the executive also undermined the implementation of the PNI

Executive bodies were broken down (interviews, June 2007) and the SCP did not provide the leadership needed to show them the advantages of the anti-corruption strategy and unite them under

a common banner.<sup>223</sup> This lack of leadership made it difficult to articulate a vision of what was desired and further develop the already difficult task of inter-agency coordination. This office exceeded its capacity in serving as the government's interlocutor with DPs and civil society, and in mapping out and implementing a series of government measures. Further, no other entity, such as the OEP or another body, spearheaded a public agenda or called on other actors to fight against corruption.

(-) The absence of a communications strategy limited adherence to measures

The absence of a communications strategy for directing pertinent, systematic messages to the administration and external actors made it difficult to inform these bodies of the Bolaños administration's policy measures. Consequently, the number of actors able to play a role in the PNI, and their level of adherence to such a role, was lower than what was needed. In addition to this lack of guidance, CSOs noted the obstacles they faced in actively participating in the government's plans through formal channels. The potentiality of their participation and the media was not fully harnessed.

(-) The overall fragmentation seen in the supply of cooperation adversely affected the level of coherence in the implementation of the PNI

The multiplicity of major development partners multiplies the options of decisions and operations available to the government, leading to distortions among priorities and resource allocation. Large sums of resources offered by development agencies attract the attention of government decision-makers and stakeholders, overshadowing areas that lack sufficient resources to function. This occurred with the procurement system vis-à-vis the implementation of the probity law and the promotion of a culture of ethics. This situation is compounded in a highly politicised environment because the high political visibility of some DPs adversely affects adherence to the anti-corruption measures that they finance. As a result, the AF was an experience in alignment that showed several of the advantages of coordinated efforts between the DPs, in addition to greater political legitimacy, in a difficult context.

(+) Spaces for inter-agency consensus strengthened the continuity of several reforms

From a more positive standpoint, several spheres of action brought together actors willing to assume an active role in the implementation of the plan. The Interior Ministry and MINHAC joined forces with the SCP to promote complex projects such as the Integrated Financial Management and Audit System (SIGFA) and the government procurement system. These spaces did not develop in other areas of the PNI, such as citizen participation and justice system reform.

(+) CSOs, vital agents in the implementation of transparency and participation measures

The CSOs became involved politically and through projects financed by DPs aimed at promoting and implementing the citizen participation law at the local and national levels, as well as ensuring an access to information law. Government programmes and new laws created a legal framework for CSOs to map out projects that focused on participation, transparency and social control. For their part, DPs provided resources which many CSOs leveraged to carry out these projects at different territorial levels.

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<sup>223</sup> Entities that were not satisfied with the results of the citizen evaluation yielded by the SCP surveys decreased their cooperation with the implementation of the PNI. There were a number of other personal traits on the part of ministers and authorities that also influenced the will of each sector to promote the government's plans.

(+) The development partners' coordination mechanism (AF) has facilitated the implementation of several measures

Lastly, the DPs' coordination efforts have helped to unify the state's actions and facilitated the DPs' negotiation processes with the government. The SCP acknowledged the AF as a permanent interlocutor as well as a strategic partner. The members of the AF aligned their objectives with those of the government and established several basic conflict resolution mechanisms through the Governance Roundtable. Although the AF initiative is recent and must overcome several internal shortcomings, it is a sound starting point for strengthening the coherence and efficiency of development cooperation while the development of anti-corruption policies is underway.

### 3.7 Results of government action

A qualified consensus exists concerning the absence of an anti-corruption public policy during either administration. From a qualitative standpoint, one success achieved by the Bolaños administration is the fact that it shifted the moral boundary of the country in a positive manner with the condemnation of the Alemán case.<sup>224</sup> Another noteworthy achievement was the introduction of transparency as a social value.

An assessment of the results of the PNI shows a primarily negative balance. To date, no major objectives have been achieved. The procurement system is still not being implemented throughout most of the government and suffers from significant shortcomings.<sup>225</sup> Furthermore, the probity law has not been sufficiently applied,<sup>226</sup> the usefulness of the costly SIGFA<sup>227</sup> project has not been demonstrated, the Civil Service Career Law of 2003<sup>228</sup> has been implemented only minimally and serious doubts exist concerning the ability to exercise the right to access information.<sup>229</sup> This situation is further exacerbated by the general perception in the country and all segments of the population that the justice system is politicised, corrupt, unfair and partial to impunity (interviews, June 2007; E&T, 2006). Moreover, there are no measures or laws to protect those who blow the whistle on acts of corruption, asset laundering is not subject to criminal punishment as an individual crime (rather only when tied to drug trafficking) and numerous and effective legal methods for ensuring impunity in open disregard of international legal commitments<sup>230</sup> ratified by the country have not been eliminated.

<sup>224</sup> At the same time, it may lose this asset given the impunity shown toward the former president and the recent accusations of corruption targeting Bolaños himself. Workshop with experts, Managua, June 2007.

<sup>225</sup> Each year, direct purchases stand at approximately USD 187 million. These purchases are authorised by the CGR and cite reasons of "urgency", "security" and/or "public interest", whose definitions are non-existent and give rise to a wide margin of discretion. For further details, see the Response of the Republic of Nicaragua to the Questionnaire on Provisions of the Convention selected for Review within the framework of the Second Round, p.17. MESICIC, OAS, July 2006.

<sup>226</sup> MESICIC 2006, Response of the Republic of Nicaragua, Chapter III.

<sup>227</sup> Ethics and transparency civic group *Ética y Transparencia* stated that "[t]o date, after 6 years and nearly USD 20 million (over USD 10 million of which went to consultants), this project fails to offer any value-added in the fight against corruption as a result of its inaccessibility and the shortcomings in its design" (E&T, 2006).

<sup>228</sup> Response of the Republic of Nicaragua to the Questionnaire on Provisions of the Convention selected for Review within the framework of the Second Round, p.13. MESICIC, OAS, July 2006. As regards the civil service, *ibid* pp.6-10. Procurement, pp.13-18.

<sup>229</sup> A law on access to information was at last passed by the AN on 14 May 2007. The law has not yet entered into force and must be governed by a regulation issued by the executive. The sources consulted recognise the doubts they have regarding the actual access that the media and citizens will have in the future to information concerning the administration.

<sup>230</sup> A series of laws and powers for government bodies that make it difficult to prosecute acts of corruption, whose elimination is included among the international commitments ratified by Nicaragua (such as the IACC

Nevertheless, several advances over the past few years can also be appreciated. The probity and citizen participation laws were passed and some 6% of the central government's budget is now transferred to the municipalities annually, while eight government bodies released information voluntarily.<sup>231</sup> Moreover, in late 2006, MINHAC launched an e-procurement portal, the OEP formulated a plan for implementing the recommendations issued by the OAS to ensure compliance with the IACC (which unfortunately has not been published by the government). The PGR strengthened its area of investigation and monitoring of government procurement. The government was able to pass legal reforms that introduced several corruption-related crimes into its criminal legislation. Lastly, the PGR and CGR created offices where citizens can report acts of corruption.

## 4 Lessons learned

The precarious quality of democracy in the country adversely affected the policies

The fight against corruption is tied closely to the end goal of democratic efforts. In recent years, a significant number of political transactions have occurred within a secretive, closed off and ad hoc system of government. These transactions hollowed out the incipient democracy of the 1990s and led to a system of bipartisan political control. This system was controlled by the respective dominant apparatuses in the FSLN and the PLC, which act as filters for all aspects of the country's social and political life. Each head of government favours his political autonomy, which helps build federations of interest groups with very basic unity. Given this scenario, the Ortega-Alemán pact and the web of relations between politics and economics in Nicaragua have limited the potential for governance.

The absence of steadfast alliances, a stable civil service and sound political structures have also prevented long-term government policies from materialising. Against a backdrop of strong political division teetering on the fringes of governance, institutions have carried out reforms in order to comply with the arrangements undertaken by the dominant political and economic groups.

The quality of democracy and nature of corruption are tied to the ways in which power is distributed. Anti-corruption public policy decision-makers should not evade this complicated issue and its implications. Strengthening the relationship between democracy and transparency in Nicaragua thus faces major challenges in political financing, citizen participation at the local and departmental level and the autonomy of local governments.

The problem in the fight against corruption in Nicaragua lies with practices, not laws

When institutions and regulatory systems have served as tools at the service of changing political interests, the execution of anti-corruption reforms can easily travel the road of mere formality.<sup>232</sup>

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and the UNCAC), remain. Immunity exists for a large number of high-level government officials; there is a monopoly on criminal suits in cases of corruption, enjoyed by the MP alone; the extradition of nationals does not exist; the president has ample ability to pardon convicts.

<sup>231</sup> Voluntary Information Submission Strategy – EVA. This initiative is no longer underway.

<sup>232</sup> At the regional level, CSOs recommend going beyond the mere adoption of modern and international laws by effectively applying them. Nicaragua's E&T also calls for a change in practices. One recent example of this situation has been the Criminal Procedural Code (2003), which introduced a new criminal justice system in Nicaragua. According to experts, this system facilitates inefficiencies and corruption in the courts and the

Corruption in this case does not need a technical, legal response but rather a political, social one. This is commonplace in the passage of new laws, which are often enacted in response to an unexpected public or private event that calls for their implementation and execution, often without the financial resources to do so laid out in the federal budget. Any step in this direction will be handed over to the state apparatus itself, which lacks the ability to perform its duties at a satisfactory level. Practices in the country can change if the fact that such legal reforms are a starting point is taken into account, as well as the fact that more resources are needed for implementation than for formulation and that the strengthening of key government institutions in the field is vital to the sustainability of the reforms.

The absence of strategy and exogenous models undermined the legitimacy and coherence of the reforms

No strategy existed for the formulation of an anti-corruption policy. The components of the PNI are deeply rooted in reform criteria taken from external entities and their application in Nicaragua was based, following Lowi's typology, on constituent and regulatory policies. These require coercive powers, a weak point for the Nicaraguan government. Moreover, the exclusion of key local actors in the formulation phase and those who will be affected by the change in the implementation of anti-corruption policies undermined the viability of many measures and their continuity over time. Furthermore, the legitimacy of the reforms was affected by the lack of appropriation mechanisms. The local actors adhere to a social, ethical and religious framework that determines any prohibited, tolerated and promoted behaviours, and any political action that seeks to create a change within this framework must take it into account as a linchpin, which did not occur. Nor did the PNI include any effort to assess the capacities for institutional, political and social change, and the rate of such change. Those subject to the policy, government decision-makers, private decision-makers, agents active in policy implementation and citizens, could not see the challenges on the horizon, which led to their decisions being made based on the day-to-day agenda and conflicts. The absence of a strategy for the formulation of anti-corruption policies and the scant integration of local and external actors were weaknesses that undermined the government's action.

The lack of assessment widened the gap between reality and expectations

Corruption is defined and materialises in manners that are specific to each population. Assessments of corruption must include a description of the phenomenon in the country and an evaluation of existing capacities for the fight against corrupt practices. In Nicaragua, the government did not achieve more than a basic sketch of citizen's perceptions of corruption. It would have been extremely useful for the government also to employ additional tools for political and technical analysis, such as evaluations that use reliable methods to assess areas of corruption, and a realistic evaluation of the government's institutional and political ability to absorb the change. These elements were absent in the PNI, which facilitated the unrealistic expectations of some DPs and the citizenry. Without a diagnosis, whether the patient will receive the proper medication for their illness is unknown.

A shared vision, a basic underpinning of any governmental agreement

The absence of a shared vision within the government concerning the problem and its solutions made it difficult to implement the PNI. Although a government body formally coordinated the implementation of the plan, there were different visions on the part of each government authority as to what should be done and how. Furthermore, as is customary several spaces of institutional power

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MP despite the fact that USAID contributed USD 14 million to modernise the legal system (Workshop of Experts, Embassy of Norway, Managua, June 2007).

were protected by their administrators, which made it difficult to reach a consensus, cooperate and execute joint tasks. The fight against corruption is a cross-cutting challenge. The creation of a common vision within the government, or at least the dissemination of this vision and its implications through directives and guidance issued by high-ranking authorities, is a basic step in unifying government efforts in the fight against corruption.

#### Change in the culture of ethics in Nicaragua requires transparency and participation

One of the visible effects of the government's efforts has been the positive change undergone by the moral boundary of Nicaraguan society, which may be lost if it is not duly strengthened. Citizen participation has a legal basis, as will access to information in the near future. The potentiality of civil society and the media in demanding transparency and participating in public affairs can be even further developed. The sustainability of a long-term process aimed at cultural change also requires public or private actors that will serve as epicentres of activity. The government bodies that undertake an individual commitment to transparency and participation in accordance with internationally recognised standards provide better conditions for reform and the investment of public funds than those that remain behind the curtain. The CSOs have capacities that are not yet fully developed in terms of participatory practices and transparency, and the independence of journalists and freedom of press still have a long road ahead in Nicaragua. One condition for the sustainable, positive modification of the moral boundary of the citizenry is the day-to-day exercise of transparency and democratic participation.

#### Fragmentation among development partners and wide margins of discretion in the government – a game of masquerade

The DPs have collaborated and competed with one another to bring pressure to bear on the government in the anti-corruption arena. Barring few exceptions, such as the measures supported by the AF, the actions undertaken have lacked a donor coordination mechanism. As a result, efforts have overlapped and been staggered. They have also encouraged positive self-evaluations on the part of several DPs. Moreover, the government procures the widest margin of discretion possible in making decisions and the absence of a serious, disseminated assessment of corruption helps it do just that. In short, the adoption of commitments allowing for broad interpretations, not grounded in any official assessment and undertaken without the use of independent evaluation instruments, creates a climate that brings together external and government actors under an umbrella of self-satisfaction. An institution-building reform has often been a means of strengthening the government and within it, certain groups and *caudillos*, unlike a formal agenda whose shortcomings will be seen a few years later. Coordination, known assessments and independent evaluations are policy elements that the DPs must favour in order to curtail this game of masquerade.

#### Multilateral funds can increase the legitimacy of DPs

Against a highly politicised backdrop, the joint initiatives of DPs, which are merely arms of the foreign policy of their countries, decrease the risk of politicisation faced by DPs. The DPs in Nicaragua gain greater discursive strength and solidarity on the part of local actors when they act in conjunction with one another. The hurdle to surpass lies in finding the most efficient, reliable mechanism for managing the multiplicity of interests and resources concerning focal points of common interest. The Anti-Corruption Fund and the Democratic Governance Fund seem to be sound starting points.

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## 6 Annexes

### ANNEX I: CHARACTERISATION OF CORRUPTION IN NICARAGUA

Bribery	Petty corruption in public administration (customs, migration, etc.). Larger-scale when economic activities are involved.
Embezzlement	High impact in cases involving the public sector and central administration.
Influence Peddling	High incidence in political and economic sectors.
Abuse of Authority	High incidence in the administration of justice.
Illicit Enrichment	High incidence in cases involving public administration.
Laundering of Ill-Gotten Funds	Performed using banks and by acquiring assets.
Concealment	In some major cases.
Obstruction of Justice	In some major cases. High incidence in accessing justice.
Political Corruption	In cases of collusion between economic and political interests. Major in some cases.

### ANNEX II: THEMES FOR COOPERATION 1990 – 2003

Period	Theme
1990 -1993	Pacification Economic and institutional reforms Stability and political arrangement Social compensation
1994 -1996	Economic reforms State reform Rise of decentralisation Municipalism and local development Justice
1997-2003	Economic reforms Justice Office of the Attorney General of the Republic Office of the Ombudsman for the Defence of Human Rights Corruption Political cooperation and civil society Decentralisation National Development Plan Agenda



Anti-corruption policy making in practice:

## Pakistan – A Country Case Study

Jessica Schultz

**U4 REPORT 1:2007 PART 2D**



## Contents

<b>ACKNOWLEDGEMENTS .....</b>	<b>148</b>
<b>1 COUNTRY BACKGROUND.....</b>	<b>149</b>
1.1 RECENT POLITICAL LANDMARKS AND MAIN GOVERNANCE REFORMS.....	150
1.2 SCOPE OF CORRUPTION IN PAKISTAN .....	151
1.3 HISTORY OF ANTI-CORRUPTION INITIATIVES AND INSTITUTIONAL FRAMEWORK .....	153
1.4 MAIN PLAYERS.....	155
<b>2 THE FACTS OF ANTI-CORRUPTION POLICY MAKING .....</b>	<b>157</b>
2.1 ORIGIN AND RATIONALE OF THE NATIONAL ANTI CORRUPTION STRATEGY (NACS) .....	157
2.2 DESIGN OF NACS .....	158
2.3 PROVISIONS FOR IMPLEMENTATION AND MONITORING .....	160
2.4 SUPPORT OF DEVELOPMENT PARTNERS TO THE DEVELOPMENT OF NACS.....	161
<b>3 ANALYSIS.....</b>	<b>161</b>
3.1 CONTEXTUAL FACTORS THAT FAVOURED OR IMPEDED ANTI-CORRUPTION POLICY MAKING .....	162
3.2 MAIN DRIVERS AND OPONENTS OF CHANGE .....	163
3.3 RATIONALE AND POLITICAL UNDERPINNING FOR THE CHOICE OF POLICY OPTION .....	164
3.4 ROLE OF DEVELOPMENT PARTNERS.....	164
3.5 INTERPLAY WITH RELATED GOVERNANCE REFORMS AND ASSOCIATED ACTORS.....	165
3.6 FACTORS THAT HINDERED IMPLEMENTATION.....	165
<b>4 LESSONS LEARNED.....</b>	<b>167</b>
<b>5 BIBLIOGRAPHY .....</b>	<b>171</b>

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This case study is part of a broader research project of the U4 Anti-corruption Resource Centre called “Anti-corruption policy making in practice – what can we learn from national strategies?” The main objective of the project is to provide insight, based on investigations in six countries, into how and why anti-corruption policy frameworks are designed, who the driving forces are, factors that promote or impede implementation, and the role of development partners in the overall process. Its findings will contribute to the ongoing debate on how to implement Article 5 of the United Nations Convention against Corruption (UNCAC).

The Pakistan country case study was drafted on the basis of a literature review and qualitative interviews with a broad range of key informants in each country. The author would like to thank Amjad Mahmood and Sami Khan for their insightful comments on earlier drafts of this study, in addition to all those who have generously provided their expert knowledge, political insights and time to contribute to this undertaking in Pakistan. I sincerely hope that the content will be useful for further anti-corruption initiatives in Pakistan as well as in other countries struggling with similar policy challenges.

# 1 Country background

Political turbulence, compounded by systemic corruption and regional instability, has characterised the 60-year history of independent Pakistan.<sup>233</sup> Since the national constitution created a federal government structure in 1973, civilian and military governments have traded power in a pattern described as the “recycling of elites” (Transparency International [TI], 2003, p.13). In 1999, General Pervez Musharraf seized power from then Prime Minister Nawaz Sharif, promising stability, growth, and not least, honest government. However, it was not long before his administration, like those before it, fell into familiar patterns of power abuse at the executive and bureaucratic levels.

In 2002, parliamentary elections marked a formal transfer to civilian rule. A controversial national referendum extended Musharraf’s tenure as president, and as of mid-2007 he retained the dual role of president and head of the army. In the spring of 2007, Musharraf dismissed the head of Pakistan’s judiciary, Iftikhar Chaudhry, on charges of misconduct and misuse of authority. Most observers surmise that the true motivation was to remove any challenge that the independent-minded chief justice posed to the president’s political ambitions.<sup>234</sup> This act catalysed protests by lawyers and opposition supporters in Islamabad and other parts of the country, and strengthened the opposition’s position ahead of elections due in late 2007.

Physical as well as political security is also on the decline. Violence and instability pervade many areas of Pakistan, in particular the northern tribal belt of Waziristan and in the southern province of Balochistan, where local leaders are engaged in an armed struggle against the military. Islamist opposition, fuelled by Musharraf’s anti-Taliban operations in support of the US-led “war on terror”, has intensified. In July 2007, the Pakistani army attacked the radical Red Mosque in Islamabad, killing over 100 people in the raid. Moreover, roadside bombs, rocket attacks and suicide assaults against the army continue at an alarming rate, causing extensive collateral damage in the form of civilian lives.

On a more positive note, the dispute with India over Jammu and Kashmir, originating in the partition of 1947, has eased since 2003 with a set of confidence-building measures. These include the restoration of road and bus connections, and even the opening of several border points to facilitate humanitarian assistance following a devastating earthquake that struck the region in 2005.

## Governance progress and government structure

Pakistan is a densely populated and ethnically diverse country of 162.4 million people. Ninety-seven percent of Pakistanis identify themselves as Muslim. Although the GDP per capita is USD 830, a quarter of the population lives below the national poverty line, while tens of millions survive on incomes just above it. Only around 50 percent of adults are literate, with women only half as likely to be literate as men (UK Department for International Development [DFID], 2007).

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<sup>233</sup> The Islamic Republic of Pakistan was founded in 1947. East Pakistan (now Bangladesh) seceded in 1971. Benazir Bhutto’s two terms as Prime Minister, for example, were cut short by the presiding presidents on grounds of her government’s corruption (1990 and 1996). In 1998, formal charges were filed against her and her family for bribery and embezzlement.

<sup>234</sup> It is widely believed that the charges against Mr Chaudhry are motivated by his refusal to ensure a compliant judiciary ahead of elections.

Despite these grim statistics, Pakistan has enjoyed over five years of sound economic growth and poverty reduction since 2002. GDP increased by an average of 6.1 percent between 2002 and 2006. In addition, steady progress is being made towards fulfilment of the Millennium Development Goals related to access to water and sanitation, primary school enrolment and the number of people living in poverty, who fell from 34.5 percent in 2001 to 24 percent in 2004/05 (DFID, 2007).

The national constitution of 1973 sets out a federal system with a Parliament, a president, and a prime minister. The Parliament is composed of two houses, the National Assembly and the Senate. The prime minister is the leader of the National Assembly's dominant party or coalition, but is formally appointed by the president. He or she is advised by a cabinet of ministers, who are appointed by the prime minister.

Administratively, Pakistan is divided into four provinces: Balochistan, North-West Frontier Province, Punjab and Sindh, in addition to several federally administered areas. The provinces are further broken down into 101 districts. Since 1999, Pakistan has been engaged in a decentralisation process to increase the authority of provincial political and administrative institutions (see section 1.1). However, federal government agencies are still heavily involved in some aspects. For example, provincial governments administer agricultural and social services, but the federal government legislates on these matters and federal agencies are also involved in their implementation. Moreover, the federal government has the power to dismiss provincial chief ministers and legislatures.

Pakistan's judicial system is crowned by the Supreme Court, followed by the High Courts in each province, and lower courts exercising both civil and criminal jurisdiction. Unfortunately, the independence of this system has been compromised by executive control of judicial appointments, promotions and removals. In 2000, for example, Musharraf dismissed 18 judges, including the Chief Justice, for refusing to take oaths of office under the provisional constitution issued after his seizure of power. Fear of another arbitrary purge limits judges' freedom to challenge government actions (International Crisis Group [ICG], 2004b). Political allies of the president fill key judicial positions, including those at the High Court level that are responsible for allocating cases to courts in a particular province. This means that pliant judges can be more easily assigned to sensitive cases that impact on executive powers (ICG, 2004b). The lack of resources and endemic corruption in the lower courts has created long delays and reduced public confidence in the judiciary.

## 1.1 Recent political landmarks and main governance reforms

Pakistan's reform agenda is captured by its Poverty Reduction Strategy Paper (PRSP, 2003) and its Medium Term Development Framework (2005-2010), which are both aligned with the Millennium Development Goals. The strategic priorities of the PRSP are: (i) to sustain growth and improve competitiveness; (ii) to improve government effectiveness and consolidate devolution; and (iii) to improve the lives and protection of vulnerable populations.

As a means to accomplish the goal of better governance, Musharraf announced the Devolution of Power Plan in August 2000. The Plan, which aims at the decentralisation of financial, political and administrative authority, is carried out through officials (Nazim and Naib Nazim, or mayor and deputy mayor elected in each district and four cities). Under the Nazim work so-called District Coordination Officers (DCO), who assist the Nazim in running the administration (except police related matters), as well as carrying out development activities in the district. While the Nazim are elected by each District Assembly on a non-party basis (even though in reality strong party affiliations may exist), the DCO is appointed by the Chief Minister of each province. Musharraf's

plan aimed to reverse a system that subordinated elected leadership to the bureaucrats who historically controlled the district administration.

So far, however, the impact of this approach on the daily lives of Pakistan's poor remains modest. Although service delivery in some areas has improved, critics argue that the rhetoric of local empowerment masks efforts to centralise power in the military government. According to one early assessment, devolution has perversely had a negative impact on democratic development in Pakistan: "the non-partisan nature of the local elections has exacerbated ethnic, caste and tribal divisions and undermined the organisational coherence of political parties" (ICG, 2004, p.i). Rather than decreasing corruption, devolution seems to have increased opportunities for rent-seeking behaviour by bureaucrats and elected officials, at least in the short term (ICG, 2004). Development partners are currently supporting efforts to address technical weaknesses, for example by providing skills in financial management to local authorities and increasing the budget monitoring capacity of community groups (Devolution Trust for Community Empowerment [DTCE], 2006).

Other initiatives pursued by the Musharraf administration have aimed to increase accountability through reforms in public financial management and procurement, tax administration and, to a lesser degree, the civil service. A fundamental change in tax policy, which took effect in 2002, limits opportunities for collusion between taxpayers and tax officials. The new system introduced a Universal Self Assessment, with risk-based audits, and a reduction in the number of income tax exemptions. In addition, the restructuring of the Central Board of Revenue (CBR) includes a new recruitment policy, and incentive and merit-based remuneration and promotion mechanisms. However, in the absence of broader civil service reform, including significant salary adjustments, the impact of these ad hoc measures has failed to increase the CBR's attractiveness as an employer of motivated Pakistani tax professionals.

The Access to Justice Project, supported by the Asian Development Bank, is another relevant effort, although its impact has been inhibited by a lack of political support, particularly within the Ministry of Law. It covers over 250 interventions in about 30 different institutions, ranging from the introduction of public interest litigation to improved performance standards for judges in the High Courts (Ministry of Law, 2006). A few improvements have been registered, such as the implementation of a case management system and the annual publication of High Court decisions. These low intensity reforms that increase transparency have created a kernel of ownership among the staff of judicial institutions. Still, after about USD 330 million in budget support and USD 20 million in technical assistance over the past several years from the ADB, only a small fraction of the capacity building activities have been completed and judicial corruption remains rampant.

## 1.2 Scope of corruption in Pakistan

In 1947, Pakistan's founding father, Quaid-e-Azam Muhammad Ali Jinnah, emphasised the need to address corruption in his first address to the country's Constituent Assembly: "One of the biggest curses from which India [i.e. British India, including territories now in Pakistan] is suffering, I do not say that other countries are free of it but I think our condition is much worse, is bribery and corruption. That really is a poison. We must put it down with an iron hand." (Ali, 2007, p.1) Six decades later, Pakistan is still struggling with endemic corruption. The 2006 Corruption Perceptions Index of Transparency International lists Pakistan in 142<sup>nd</sup> place out of 163 countries surveyed.

Information about the scope and pattern of corruption is largely anecdotal or descriptive, being based on media coverage of formal investigations. A few notable efforts have, however, been made to quantify or qualify the phenomenon. In 2001, a task force on the reform of tax administration in Pakistan estimated that the revenue lost by corruption was 64 percent in income tax, 48 percent in

customs, and 45 percent in sales tax, amounting to approximately USD 3.3 billion a year (National Anti Corruption Strategy [NACS], 2002). In 2006, a perception survey carried out by Transparency International-Pakistan asked ordinary consumers to rank the level of corruption. The 4,000 respondents answered as follows (1 being the most corrupt):

<b>2006 Ranking</b>	<b>2002 Ranking</b>
1. POLICE	1. POLICE
2. POWER	2. POWER
3. JUDICIARY	3. TAXATION
4. LAND	4. JUDICIARY
5. TAXATION	5. CUSTOM
6. CUSTOM	6. HEALTH
7. HEALTH	7. LAND
8. EDUCATION	8. EDUCATION
9. RAILWAY	9. RAILWAY
10. BANK	10. BANK

This survey estimated the yearly expenditure on bribes at Rs. 2,303 (approximately USD 38) per household (Transparency International-Pakistan [TI-Pk], 2006). Even in sectors perceived as being relatively less affected by corruption, the price for average citizens is high. A Social Audit of Governance and Delivery of Public Services (CIET and DTCE, 2004-05), for example, found that almost all users of government health facilities in 2004 (94 percent) paid something for the visit. The mean total cost for a visit concerning a simple fever was Rs 229 (USD 3.76) nationwide.

In addition to the data on administrative corruption, newspaper reports of grand corruption pepper the headlines in Pakistan. Although there is little systematic analysis of the phenomenon, one facilitating factor for grand corruption is certainly the highly regulated nature of Pakistan's economy. Despite increased openness and deregulation in recent years, the state still intervenes in the market through the discretionary allocation of subsidies, quotas, price ceilings, etc. (TI, 2003). By controlling supply or suppressing prices or both, senior level managers are able to extract significant bribes. In addition, the prominent role of businessmen – directly and indirectly – in politics has exacerbated opportunities for corruption. While a good proportion of politicians themselves have major business interests, other businessmen enter power through the back door by exchanging patronage and political support for debt write-offs, tax exemptions and other favours (TI, 2003).

One recent scandal involved a dramatic increase in sugar prices, which allegedly resulted from collusion among producers. Shortly after the National Accountability Bureau (NAB) announced it would investigate the case, involving not only cartel activity but also tax evasion, it dropped the matter entirely. The fact that many of the major mills are owned by sitting ministers contributed to the perception that political actors are interfering with NAB's more sensitive activities. The 2006 decision by Chief Justice Iftiqhar Chaudhry to strike down a government deal to sell Pakistan Steel Mills to Russian, Saudi and Pakistani investors for a cut-rate price also fuelled suspicions that members of the government stood to profit handsomely from the deal. Musharraf's subsequent efforts to fire Chaudhry (for abuse of power, ironically) have only contributed to the perception that rather than fighting elite corruption, the President is himself deeply entangled in these networks. As of 2006, Pakistanis appeared quite cynical about the government's commitment to addressing the problem. TI's Global Corruption Barometer found that 23 percent of respondents rated the administration's anti-corruption efforts as "not effective", 27 percent said that the government did not fight corruption at all, and a further 10 percent claimed that the government deliberately encourages corruption (TI, 2006).

### 1.3 History of anti-corruption initiatives and institutional framework

The struggle against systemic corruption has dominated Pakistani politics since the country's independence in August 1947.<sup>235</sup> The Second World War led to an explosion of procurement-related corruption, and the first specialised agency in South Asia, the Special Police Establishment, was created to crack down on that problem (NACS, 2002). Upon independence, millions of Muslim refugees fled from India to settle in the new state, composed of two physically separate wings (East and West Pakistan). The mass migration put additional stress on an already weak economy run by inexperienced politicians, who inherited a colonial legacy of “pervasive, intrusive, extractive, and elitist government” (NACS, 2002, p.11). Despite immense challenges, the new leadership attempted to address corruption through a series of legislative initiatives. The 1947 Prevention of Corruption Act inherited from British rule was supplemented by the Public Representatives (Disqualification) Act of 1949 and the Elected Bodies (Disqualification) Ordinance of 1959. These latter two laws officially aimed to exclude corrupt officials from government, but in practice they were perceived to be tools directed against political enemies of the ruling authorities.

In 1961, a Special Committee for the Eradication of Corruption from Service was established to investigate the deeper causes of the problem, including how it occurred in the public service and how it might be reduced. The six-member Committee, chaired by the Principal Secretary to the President, Mr. Fida Hussain, emphasised the need for long-term reform efforts (NACS, 2002). In 1987, another Committee for the Study of Corruption came into being, which surveyed public perceptions of corruption in various sectors.

Unfortunately, none of these well-meaning initiatives achieved much in the way of real impact. According to the analysis presented in the 2002 National Anti Corruption Strategy (NACS), this was for two reasons. First, political will and support quickly faded in each case, and second, policy recommendations were not supported by a concrete plan for implementation. The lessons learned from these experiences were consciously taken into account by the NACS team and explain their commitment to involving the widest group of stakeholders possible.

From the 1960s onwards, a series of anti-corruption agencies were mandated to enforce the expanded legal framework. The West Pakistan Anti Corruption Establishment of 1961 created provincial-level Anti Corruption Establishments (ACEs). The Special Police Establishment was replaced in 1975 by the Federal Investigation Agency (FIA), whose broadened responsibilities covered immigration matters, economic crime, anti-terrorism, and corruption by federal government employees as well as corporate officials. All of these bodies were perceived to be tainted by corruption themselves and failed to stem public cynicism about the problem. The FIA's independence, for example, was hampered from the outset by its placement within the Interior Division, its politicised leadership (22 directors in 27 years) and its subordination to the Federal Anti-Corruption Committee, which had to approve all investigations against gazetted officers. The Ehtesab (Accountability) Commission was established in 1996 to reinforce the FIA, but it too was plagued by accusations of political bias. In November 1999, following Musharraf's coup, the NAB replaced the Ehtesab Bureau. With headquarters in Islamabad, it has four regional offices in the provincial capitals and one at Rawalpindi.<sup>236</sup>

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<sup>235</sup> Even earlier, in 1921, the former Punjab Government had established a committee to study forms of corruption, the conditions under which it spread, and potential remedies to the problem (NACS, 2002).

<sup>236</sup> The regional NAB offices have a much broader mandate (all offences under the NAO) and more resources than the ACEs, which have limited jurisdiction only over provincial-level public servants. In addition, NAB has overriding jurisdiction over the ACEs, meaning that the Chairman of NAB can take up cases that the ACEs have chosen not to pursue.

Initially, NAB's mandate focused solely on enforcement, investigating and prosecuting corruption offences covered in the new National Accountability Ordinance (see below). Following approval of the Anti Corruption Strategy in 2002, the NAB broadened its activities to include prevention and education, and in 2005 it assumed corruption-related responsibilities previously under the auspices of the FIA.<sup>237</sup> Today, however, the bulk of NAB's work still rests securely within the enforcement prong of its mandate. As of June 2007, NAB had recovered Rs 141.22 billion (approximately USD 2.2 billion) through bank defaults, plea bargaining and "voluntary return" arrangements (see below). In addition, it has finalised over 900 investigations against government servants, businessmen, ex-military personnel and others (NAB, 2007). Despite NAB's relatively strong record, however, people interviewed for this study noted that it also faces pressure to ignore cases involving the president's political allies.

Other institutions relevant to corruption control in Pakistan include the Auditor General's Office, the National Assembly's Public Accounts Committee, the Ombudsman's Office and the National Reconstruction Bureau. Although the Auditor General's Office has recently improved its technical capacities, it remains fundamentally compromised by the fact that its budget is determined by a key target, the Ministry of Finance. Unfortunately, allegations of collusion between individual auditors and bureaucrats are also quite common. The Public Accounts Committee (PAC), meanwhile, is hampered by the tardiness of the reports it reviews and its inability to impose sanctions when orders are ignored by the executive.

The Ombudsman's Office receives and addresses public complaints of maladministration, even awarding compensation where appropriate to victims. Within this mandate, it handles individual cases of bureaucratic rent-seeking and thus plays an important role in reducing lower-level corruption. Although the Ombudsman's Office is well respected, it (like the PAC) depends on the goodwill of guilty ministries to implement its recommendations.

The National Reconstruction Bureau (NRB), established in 1999 to "formulate policy for national reconstruction", promotes accountability measures within the devolution process.<sup>238</sup> In particular, it has tried to integrate transparency measures within development funding and introduce public participation into local governance activities.

## Legal framework

The legal framework for addressing corruption in Pakistan is composed of three main laws: the Pakistan Penal Code of 1860 (PPC), the Prevention of Corruption Act of 1947 (PCA) and the National Accountability Ordinance of 1999 (NAO). The PCA criminalises active and passive bribery, while the PPC outlaws attempted corruption, in addition to extortion or abetment of extortion. It also addresses money laundering and the bribery of foreign officials (Global Integrity, 2006). The National Accountability Ordinance, which outlines the authority of the NAB, refers to bribery, embezzlement, misuse of power, fraud and illegal enrichment. The NAO has been the subject of widespread criticism as well as the source of considerable confusion. First, it excludes important categories of officials from its remit, including the judiciary and active armed forces personnel.<sup>239</sup> The Chairman of the NAB may choose to release an accused in exchange for the

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<sup>237</sup> Specifically, the anti-corruption operations and economic crime wings of the FIA were transferred to the NAB.

<sup>238</sup> [www.nrb.gov.pk/about\\_nrb/index.html](http://www.nrb.gov.pk/about_nrb/index.html)

<sup>239</sup> The NAO does, however, cover retired armed forces personnel as well as armed forces personnel working outside the military. Corruption by active armed forces personnel in the military falls under Pakistan's Army Act. The justification for excluding the judiciary from NAB's remit is that administrative action against

“voluntary return” of assets obtained through corrupt activities, which many argue is akin to impunity. A plea bargain provision has also been attacked for granting NAB extensive powers of pardon, when in fact only the courts, not NAB, have authority to change the punishment terms. The NAO also provides for the detention of suspects without charge for 90 days. Even this timeframe was abused quite openly when NAB first started work, with reports of some individuals being held for up to two years despite a lack of evidence against them.<sup>240</sup> As of August 2007, Pakistan had signed, but not ratified, UN Convention against Corruption.

## 1.4 Main players

### The military and political parties

Despite the formal existence of a multi-party system, the military has traditionally steered the course of foreign, security and domestic policy through direct rule or influence over the civilian government (TI, 2003). Today, senior army officers occupy leadership positions in key institutions, including the NAB. The “King’s Party”, the Pakistan Muslim League (Quaid-e-Azam) (PLM-Q), has generally rubber-stamped presidential decisions. The main parties in opposition to Musharraf are the Pakistan People’s Party (PPP) and the Muttahida Majlis-i-Amal (MMA), a coalition of religious parties that has historically drawn followers from the North-West Frontier Province. The PPP is a pro-democracy party that rejects military rule, while the MMA objects to Musharraf’s close relationship with the United States as well as his anti-Taliban operations along the Afghanistan border. Other parties include the national Pakistan Muslim League (PML-N) and the Muttahida Qaumi Movement (MQM), which derives most of its support from Urdu speakers in the urban centres of Karachi and Hyderabad. No matter what happens in the upcoming elections, the fact that political parties themselves are perceived to be highly corrupt makes them unlikely to champion anti-corruption as a campaign priority.

### Parliament

The National Assembly consists of 342 members, of whom 272 are directly elected. In addition, the Pakistani Constitution reserves 10 seats for religious minorities and 60 seats for women, which are filled by proportional representation among parties with more than 5 percent of the vote.<sup>241</sup> Neither the federal nor provincial legislatures, which resumed their functions in late 2002 following extended disruption occasioned by Musharraf’s coup, have the capacity to fulfil ordinary oversight roles vis-à-vis the exercise of executive power. Amendments to the Constitution have been passed in less than an hour, and privileges for parliamentarians themselves have been approved without debate (NACS, 2002). To address the structural weaknesses, including the plethora of parliamentary committees deemed inactive or ineffective, some development partners are providing staff training in essential legislative processes such as budgeting, the functioning of committees, and rules of parliamentary process (USAID, 2007).

### Bureaucracy

It is widely acknowledged that Pakistan inherited a competent and well organised bureaucracy in 1947. However, in the succeeding six decades, poor governance and incoherent policy formulation have taken their toll. Benazir Bhutto’s administration increased recruitment into the civil service as

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judges may compromise their independence. The Supreme Judicial Council is charged with assessing allegations of misconduct within the judiciary.

<sup>240</sup> A. Jehangir, personal communication, March 2007.

<sup>241</sup> See Constitution of Pakistan, [www.pakistani.org/pakistan/constitution/part3.ch2.html](http://www.pakistani.org/pakistan/constitution/part3.ch2.html)

a patronage mechanism, leading to a heavily bloated bureaucracy (Nadvi and Robinson, 2004). To compound the problem, the proportion of civil service appointments granted to (unqualified) military officers has increased with each successive military regime. It is estimated that up to 1,200 senior appointments in the civil service and public sector enterprises have been awarded to serving military officers under Musharraf (Nadvi and Robinson, 2004). Corruption in the bureaucracy is fuelled by low salaries, modest benefits packages, a lack of job security, and low morale. The repeated decentralisation efforts have also served to weaken the capacity of the federal and provincial bureaucracies, without measurable improvements at the local levels (Nadvi and Robinson, 2004).

### Civil society

Civil society does not play an active role in holding the government to account for corruption issues in Pakistan. Indeed, most CSOs focus on service delivery in areas such as literacy and health rather than research and lobbying for *any* kind of policy change, much less anti-corruption reform (Ali, 2007). A survey by Transparency International-Pakistan found that “civil society is just not interested in taking up what they term as controversial issues or of confronting the government” (Ali, 2007, p.2). Important exceptions, however, are those groups that conduct advocacy around women’s rights and the environment. The handful of organisations that do address corruption explicitly include TI-Pakistan in Karachi and the Center for Peace and Development Initiatives in Islamabad, which has programmes on the right to information and budget monitoring.

### Private sector

The private sector in Pakistan is also generally inactive in terms of governance reform. According to one analysis, “it has not been able to project its collective interests in the political and economic realms through representative business associations or the political parties. Its consequent ability to influence fiscal, industrial and trade policies has been very limited” (Nadvi and Robinson, 2004, p.iv). With a comparatively light multinational presence in Pakistan, the business environment (including the Chamber of Commerce) remains dominated by family operations in which traditional – often untransparent – ways of working persist. However, there is an emerging entrepreneurial class, particularly in the field of information technology, which does not benefit from the status quo and could potentially become a force for progressive change.

### The media

Compared to other countries under military rule, Pakistan’s media has been relatively free – until very recently – under President Musharraf. There are today more than 40 television channels and dozens of FM radio stations (The Economist, 2007). Corruption within the administration has been covered extensively, although reports tend to focus on specific incidents rather than systems or policies.<sup>242</sup> The investigative stories that do appear tend to be published in English-language newspapers such as The News and Dawn. While these journalists are generally better-trained than their Urdu media counterparts, the Urdu papers reach a wider audience and therefore pose a greater threat to ruling authorities.<sup>243</sup> On occasion, blatant interference in editorial decision-making occurs. Cable television operators have been asked to remove programmes that undermine the “national interest”, and The Dawn recently filed a court case to protest the denial of government advertising revenue following the publication of sensitive stories (Ali, 2007). In June 2007, as a sign of his own vulnerability, Musharraf granted the Pakistan Electronic Media Regulatory Authority (PEMRA) the right to close television and radio offices, seize equipment and suspend operating

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<sup>242</sup> A. Abbasi, personal communication, March 2007.

<sup>243</sup> A. Abbasi, personal communication, March 2007.

licenses. Although he backed down quite quickly, the move may signal increasing hostility between the government and the media. It should also be noted that the media struggles with internal corruption challenges, as owners and journalists have been known to blackmail individuals suspected of corruption in return for not covering the particular case (Ali, 2007).

### Development partners

Despite a brief interruption of development aid following the 1999 coup, development partners (DP) returned to support Pakistan's transition following the so-called civilian elections in 2002.<sup>244</sup> As of 2005, Pakistan received approximately USD 1.7 billion in official development assistance.<sup>245</sup> Major multilateral partners in Pakistan include the World Bank (WB) and the Asian Development Bank (ADB), both of which provide large long-term loans and grants to the country.<sup>246</sup> Bilateral assistance comes from mainly from the United States, followed by Japan, the United Kingdom and several European countries. Reconstruction needs arising from the October 2005 earthquake, in addition to geopolitical imperatives, have led to an increase in funding commitments by leading DPs.<sup>247</sup>

The fact that Musharraf is an important ally in the “war on terror” means in practice that Western DPs are reluctant to confront the government on corruption, much less condition their development support on progress in governance reform. At the same time, many DPs face increasing pressure to insulate their funds from misuse – particularly the large sums targeted for infrastructure and disaster recovery – which has resulted in a narrow focus on financial accountability within many aid-funded programmes.

## 2 The facts of anti-corruption policy making

### 2.1 Origin and rationale of the National Anti Corruption Strategy (NACS)

The NACS was developed as a project under the auspices of the National Accountability Bureau (NAB), in response to the impression that previous anti-corruption efforts, with their focus on enforcement, were inadequate to address the overwhelming corruption challenges facing the country. The concept was originally formulated by the then Chief of Staff to the Chairman of NAB, who had learned about more comprehensive approaches to anti-corruption through his participation

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<sup>244</sup> The largest bilateral donor, USAID, had halted military and new economic assistance as early as October 1990, under a US law that forbids non-emergency aid to countries that possess nuclear devices.

<sup>245</sup> <http://devdata.worldbank.org/external/CPProfile.asp?PTYPE=CPandCCODE=PAK>

<sup>246</sup> The World Bank's ongoing portfolio in 2007 alone consists of 18 projects under implementation with a net value of USD 1.1 billion. See “Pakistan Country Overview”, [www.worldbank.org](http://www.worldbank.org)

<sup>247</sup> USAID alone is providing USD 1.5 billion over five years in project assistance in the areas of education, health, economic growth, democracy and governance, and earthquake reconstruction (in addition to USD 1 billion in budget support during the period 2005-2009).<sup>247</sup> The UK's Department for International Development announced in November 2006 plans to double the amount of aid provided to Pakistan from 2008-2011 to GBP 480 million (DFID, 2007). Other donors include the World Health Organization (WHO), the World Food Program (WFP), the Islamic Development Bank, the United Nations Children's Fund (UNICEF) and the United Nations Development Programme (UNDP).

in various international fora.<sup>248</sup> Some people interviewed have also suggested that the NACS project provided an irresistible opportunity for NAB to expand its influence as an organisation, particularly vis-à-vis the FIA.

The stated purpose of the NACS project included three elements:

1. to undertake a review and assessment of the causes, nature, extent and impact of corruption from a broad perspective;
2. to develop a broad-based high level and integrated strategic framework for tackling corruption, focusing on preventing as well as monitoring and combating corruption, ensuring consistency with the good governance reforms, and
3. to create an implementation plan based on the strategic framework to tackle corruption (NACS, 2002, p.1).

## 2.2 Design of NACS

### Process and stakeholder involvement

Despite early efforts to engage senior-level officials, the NACS Project Team consisted of mid-career civil servants drawn from relevant ministries. Incentives included increased pay for the duration of the six-month assignment, from February to September 2002. Fifty million rupees (roughly USD 830,000) was allocated from public funds to pay for the project. In addition, the DFID provided GBP 200,000 to cover the salary and other costs of the KPMG consultants hired to provide ongoing advice and support to the process.<sup>249</sup> The NACS team was divided into three groups, each with 2-3 members from the Government of Pakistan and one from KPMG. These groups focused on the following areas: i) legal reform and judiciary, ii) public administration reform, and iii) anti-corruption agencies.<sup>250</sup>

In the **first phase** of the project, an extensive consultation process took place, involving “several hundred meetings, eight workshops and 18 focus groups at Federal, Provincial and District levels” (NACS, 2002, p.2). The purpose of these meetings was to establish various stakeholders’ views about corruption and how it might be tackled, and to familiarise people from all segments of society with the strategy development process. Face-to-face interaction through workshops and focus group discussions was preferred over surveys and other modes of information collection to elicit more direct responses from the various stakeholders, and to identify potential champions of reform who could later be engaged in the implementation process (Mahmood, 2007).

According to the final NACS document, the primary output of the NACS project was not the strategy itself but “the creation of a broad coalition of stakeholders committed to implementing the

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<sup>248</sup> Some respondents during interviews in Islamabad (March 2007) said that the Chief of Staff was particularly inspired by Pakistan’s participation in the OEDC-ADB Anti-Corruption Initiative for Asia to pursue the classic “three-pronged approach” advanced by that framework.

<sup>249</sup> This project ran from June 2001-August 2002. See [www.u4.no/projects/project.cfm?id=154](http://www.u4.no/projects/project.cfm?id=154)

<sup>250</sup> A Steering Committee was also established for the project, composed of the NAB Chairman and the Secretaries of Law, Interior and Finance. Other members included the Chairman of the Central Bureau of Revenue (CBR), along with representatives from the Federal Ombudsman, Auditor General, Chamber of Commerce, Security and Exchange Commission, the National Reconstruction Bureau, and three of the four provincial governments (North-West Frontier Province, Sindh, and Balochistan) (NACS, 2002).

strategy and rooting out corruption” (NACS, 2002, p.1). While it is a stretch to claim that the consultation process catalysed any kind of coalition, much less a sustainable one, the meetings provided a rich basis on which the project team could assess the concerns of average Pakistani citizens. The strategy reflects the broad understanding of corruption that emerged from discussions. It defines corruption as “behaviour on the part of office holders in the public and private sectors, in which they improperly and unlawfully enrich themselves and/or those close to them, or induce others to do so, by misusing the position in which they are placed” (NACS, 2002, p.5).

However, it is critical to note that the strategy was never championed by the political leadership in Pakistan. For one thing, the major political parties were not involved. According to one former senior NAB official, “politicians were never asked to engage in the strategy because we assumed they were not interested”.<sup>251</sup> The mid-ranking officers asked to spearhead the strategy had little leverage to engage the most senior authorities. Finally, certain key officials were reluctant to back a process driven by a military-led enforcement institution, no matter what rank its leaders had. This had enormous repercussions for implementation prospects, as discussed below.

**Phase two** of strategy development involved desk research on “best practices” for anti-corruption reform by the NACS team, in addition to continuing consultations with experts for advice and guidance. Provincial- and district-level workshops were also conducted to discuss and provide feedback on strategic direction.

The **final phase** involved a large federal-level workshop with more than 300 national and international experts to debate the draft strategy (Mahmood, 2007). The NACS project was approved by the President in October 2001 and presented to the Cabinet in September 2002. According to those involved, there was no discussion of the strategy either within Parliament or within the Cabinet, which simply received a copy of the strategy for its sign-off.

### Knowledge base

Unlike many similar strategies, the NACS document includes a detailed analysis of corruption patterns and risks. Chapter 2 summarises the findings of recent research, including household surveys conducted by Transparency International-Pakistan and the National Reconstruction Bureau (NRB) together with CIET (CIET and NRB, 2001-2002). Academic literature is also referenced, including articles about tax administration and the shadow economy (NACS, 2002). In Chapter 3, systemic weaknesses in Pakistan’s National Integrity System<sup>252</sup> are analysed in detail as a foundation for the proposed interventions. Research was carried out by the NACS team with the support of the international consultants.

### Content and priorities

In adopting the National Integrity System approach, the NACS team conceived of corruption as a governance problem to be addressed by strengthening various institutions and sectors (often called “pillars”) that are important for the maintenance of public integrity. Although the relevant “pillars” differ in each country context, in Pakistan the following were selected for analysis: the legislature and political system; the executive; public accountability bodies: the Auditor General’s Department,

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<sup>251</sup> Personal communication from former NACS Team Member, March 2007.

<sup>252</sup> A country’s *National Integrity System* (NIS) comprises the whole of government and non-governmental institutions, laws and practices that can, if functioning properly, minimise levels of corruption and mismanagement. The concept of NIS has been developed and promoted by Transparency International as a framework with which to analyse corruption in a given national context, as well as the adequacy and effectiveness of national anti-corruption efforts. See [www.u4.no/document/glossary.cfm#integritysystem](http://www.u4.no/document/glossary.cfm#integritysystem)

Public Accounts Committee and the Ombudsman; anti-corruption agencies; the legal system and judiciary; the media; civil society; and the private sector. The most comprehensive set of recommendations pertains to the executive and includes provisions such as the payment of a living wage to civil servants, meritocratic human resource practices in the public sector, improved internal controls and the reduction of intrusive regulation (deregulation and privatisation as per national policy) (Mahmood, 2007).

The Implementation Action Plan, annexed to the report, includes 398 measures. In terms of prioritisation, a number of these are labelled “quick wins”, while others were to be implemented within a year and still others within 1-5 years. Despite the intention stated at the beginning of the strategy to focus on judicial reform, it does not appear that priorities in the Action Plan are based on either the original analysis or any other kind of public impact analysis.<sup>253</sup> The NACS does acknowledge the potential of both external risks (i.e. political or bureaucratic resistance) and internal risks (limited funding, delays) to slow or even prevent implementation. However, no measures were specifically outlined to address them; rather, it was recommended that a further exercise be undertaken to develop risk management strategies (NACS, 2002). Such an exercise was never conducted.<sup>254</sup>

## 2.3 Provisions for implementation and monitoring

### Roles and responsibilities

According to the NACS, named government institutions would undertake the relevant reforms listed in the Implementation Action Plan. Moreover, all government bodies would be expected to implement a range of systemic measures, including the adoption and monitoring of codes of conduct, asset declaration regimes, etc. Finally, the political authorities (“the government”) were charged with developing cross-sectoral measures, such as legislative proposals to reform procurement procedures, restructure civil service pay, etc. Coordination responsibilities lay with the National Accountability Bureau.

### Monitoring and communication

In terms of monitoring, the Steering Committee active during the strategy development process was converted into the Implementation Committee, headed by the Chairman of the National Accountability Bureau. This Committee was, according to the strategy, to meet on a regular basis (once every three months) to review progress on the Action Plan, and provide advice and guidance for improvement (NACS, 2002). Although its composition theoretically included not only senior government officials but also representatives from civil society, the media and academia, these later groups were never actually involved and participation from the government side was highly irregular. As of August 2007, the Committee had not met at all for nearly two years.<sup>255</sup>

Communication of the NACS to the public is mentioned in the Implementation Action Plan, which proposes that the anti-corruption agencies “collaborate with media to develop articles and supplements in local languages on NACS and responsibilities of citizens, providing case studies of successes and providing contacts of civil society organisations involved in the fight against corruption” (NACS, 2002, p.133). However, communication of the strategy to the implementing agencies themselves was not explicitly addressed. What happened, in essence, was that a copy of

<sup>253</sup> This was confirmed by former NACS team members during interviews in Islamabad in March 2007.

<sup>254</sup> Personal communication, former NACS team member, March 2007.

<sup>255</sup> Personal communication, NAB staff, March 2007.

the NACS booklet was sent to the relevant ministries with an introductory letter from the Chairman of the NAB presenting the Cabinet-approved strategy. Because no attempt was made to clarify specific responsibilities, many recipients were either unaware or unclear about which points pertained specifically to them.

## Resources

Resource implications were included as a column of the Action Plan but for most reforms this box was left blank. Where it was filled in, no specific amounts were estimated; the authors indicated instead general needs such as “rightsizing costs”, “training costs”, and “capacity building costs”.

## 2.4 Support of development partners to the development of NACS

Anti-corruption has not traditionally been an explicit part of development partner agendas in Pakistan, which nonetheless support many activities that implicitly address corruption: institutional modernisation processes, including the use of information and communication technology; civil service restructuring; and capacity-building of local government institutions, among others (Ali, 2007b). Corruption is still a very sensitive topic of discussion at the bilateral level. When the NACS project was proposed, then, it offered a rare opportunity to contribute to government-led anti-corruption reform. DFID, which had quietly provided resources to the NAB from 2000, agreed to support the NACS process by providing international expertise. According to one DFID employee, the aim was to promote whatever transparency was possible within the confines of a military regime, however imperfect the project’s initial premises.<sup>256</sup> From the perspective of the Government of Pakistan, the low-key involvement of a single DP helped avoid any impression of external interference.

## 3 Analysis

NACS was, to a large extent, a stillbirth: hatched in an environment radically different – and much less accommodating – than the one in which it was conceived. Although the NACS was approved “in principle” by the Cabinet before the 2002 elections, the new politicians were not part of the NACS development process, and they harboured a deep mistrust of the organisation in which it was anchored.<sup>257</sup> Musharraf, for his part, was beholden to his political allies and was in no position to push through an agenda that threatened their interests. Senior bureaucrats who had earlier indicated enthusiasm for pursuing a preventive approach to corruption lost interest when they realised that the strategy was no longer a government priority. Therefore, the will to implement spluttered out quickly at all levels.

While some reforms have certainly succeeded in reducing corruption over the past five years in Pakistan, they have generally not been undertaken in the name of NACS, and awareness of the document even among federal ministries is low. In March 2007, the one-person Policy Unit at NAB sent out a letter to the ministries named in the Implementation Plan to ask about the status of their activities. NAB acknowledges, however, that it has no authority to compel implementation. In terms of formal monitoring, the Implementation Committee has completely failed to catalyse action from key stakeholders.<sup>258</sup> Meetings stopped taking place on a regular basis due to the deprioritisation of

<sup>256</sup> Personal communication, DFID officer, March 2007.

<sup>257</sup> In fact, some of the new politicians coming into power were under active investigation by NAB.

<sup>258</sup> In fact, the Committee has spent the majority of its meetings designing a new income/assets declaration system for public servants. A computer-based pro forma has been developed, and under the new system the

NACS by the Chairman, who served from 2005 until July 2007. NAB has unsuccessfully tried to persuade the Prime Minister's Secretariat to assume a formal role in monitoring the NACS.<sup>259</sup>

Of all the bodies tasked to implement aspects of the NACS, the NAB itself has probably accomplished most to fulfil the recommendations prescribed to it under the Action Plan. The National Accountability Ordinance has been officially amended so that the NAB legally has an awareness and prevention role, in addition to its enforcement activities. NAB also has created a Code of Conduct for internal use, and drafted standard operating procedures and formal job descriptions for staff. In addition, its staff capacity has been increased by about 1,000 people on the recommendation of the NAB restructuring team. One of the current priorities is to reinforce and expand the work of the regional NAB offices, which have so far engaged only in local investigation activities. A remaining challenge for NAB is to develop the capacity to give policy advice. NAB did draft a concept paper for the Pay and Pension Committee arguing that a living wage should be provided to public servants, with first priority given to those that play particularly key roles in corruption control: the police and the judiciary. However, the proposal was rejected on the grounds that it would be unfair to favour these groups.

### 3.1 Contextual factors that favoured or impeded anti-corruption policy making

(+) Pressure on General Musharraf to demonstrate commitment to good governance following the 1999 coup:

The army justified its takeover primarily in terms of the need to remove a highly corrupt civilian administration. Musharraf promised clean, effective government and quick action against those responsible for looting state assets. Not only was the Pakistani public eager to see him deliver on these promises, but so were international partners anxious to find valid reasons to support an undemocratic regime.

(+) NAB's strength:

At the earliest stages of policy development, NAB enjoyed a reputation as the most effective anti-corruption agency in Pakistan's history. It was associated with a comparatively clean military regime, and despite the drawbacks of housing the strategy within NAB which emerged later, in 2001 it was probably the only institution with enough political leverage to pull off the strategy process.

(-) The need for political compromise undermined sustained political will:

Musharraf's declared interest in the NACS faded in the run-up to parliamentary elections in 2002, when he realised that he would have to ply corrupt politicians from various parties in order to secure his own position. According to several informants interviewed, this factor had a strong dampening effect on the administration's commitment to NACS implementation. There was therefore never a real demand from the top that responsible agencies implement aspects of the strategy or Action Plan.

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reporting period for the declaration has been aligned with the filing of income tax returns. Still, the regime is not fully operational. The monitoring aspect – 5-10% of the forms are to be audited every year – has been held up by a lack of database training for the staff assigned to the task.

<sup>259</sup> Personal communication, former NACS Team Member, March 2007.

(-) Lack of capacity and commitment within implementing agencies:

Many members of the senior leadership in state institutions following Musharraf's coup consisted of military personnel with little experience in civil administration. Many were not capable of analysing corruption risks within their own institutions, much less spearheading the development of policies to address them. Furthermore, some civilian officials were sceptical about engaging too closely with the NAB, which at the time of the strategy development was known mainly for its heavy-handed and seemingly biased enforcement activities.

(-) Lack of sustained commitment from development partner:

Development partner support to policy development was weak and intermittent. A single agency was involved, DFID, and even DFID's role was compromised by changes in personnel and security fears resulting in the temporary evacuation of the British Project Manager. There was no joint commitment to implementation of the Action Plan, and the strategy never became a major reference point for dialogue with the administration. The political imperative to engage with Musharraf at all costs, given his pivotal role in fighting the Taliban, came to outweigh concerns about the slow progress of governance reforms.

### 3.2 Main drivers and opponents of change

The main driver of strategy development was without a doubt the NAB itself. The NACS allowed NAB to solidify its position as Pakistan's primary anti-corruption body, and assume functions previously assigned to the FIA and other institutions. At the time the NACS was drafted, the concept of a "three-pronged" anti-corruption agency (engaged in enforcement, awareness-raising, and prevention) was promoted internationally as the most promising response to entrenched corruption in the public sector.<sup>260</sup> With its blueprint for a holistic reform agenda, then, NAB could extend its mandate beyond mere enforcement. It could also potentially attract increased funds by flagging its policy role with development partners.

Initially, Musharraf himself could also be considered a driver for change, particularly considering his close ties with the military leadership of NAB. He formally approved the project in October 2001, and the implementation mechanism one year later. However, it is unclear whether he knew exactly what the strategy entailed.<sup>261</sup> His enthusiasm certainly petered out following the parliamentary elections in 2002, and if he never became an avowed opponent, he certainly did not actively promote NACS after that.

A third force in support of change was the media, which has managed to keep integrity issues – particularly individual cases – on the public agenda despite periods of political interference and low investigative capacities. The media also collaborated with NAB in early efforts to increase public awareness about the impact and evils of corruption.

As noted earlier, the strategy's main opponents were the politicians and ministers most suspicious of, or uncomfortable with, NAB's role in its development. Inconsistent representation of responsible agencies in the Implementation Committee was one early sign of trouble.

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<sup>260</sup> This was based largely on the well-publicised success of Hong Kong's ICAC, as well as similar institutions in Singapore and New Zealand. Recently, however, serious doubts have begun to be posed about the appropriateness of independent anti-corruption agencies in developing country contexts. See, for example, [www.u4.no/themes/aacc/main.cfm](http://www.u4.no/themes/aacc/main.cfm)

<sup>261</sup> Interestingly, while in most countries the president or prime minister will sign the introduction to an anti-corruption strategy document, the foreword to NACS is written instead by the Chairman of NAB.

### 3.3 Rationale and political underpinning for the choice of policy option

The design of the NACS was influenced by good practice recommendations of the time, which held that systemic corruption is best addressed through a holistic and balanced strategy targeting the so-called “integrity pillars” in a particular country. According to those involved in the NACS process, it was important to political leaders that the strategy took an internationally-recognised form, such as the National Integrity System (NIS) model. Indeed, the final cover, with its pillars against a light-blue backdrop, looked nearly identical to the Kenyan anti-corruption strategy developed around the same time. The fact that the NACS Team was housed within NAB – a military-led enforcement agency in the process of mandate expansion – helps explain why the strategy focuses mainly on state institutions at the federal level.

In Pakistan, as elsewhere, most elements considered desirable within the NIS approach were only fulfilled to a partial degree, if at all. According to “good practice” presumptions, a strategy should be comprehensive; driven by political will and local ownership; needs-based, targeted and sequenced; resource- and capacity-based; measurable; and transparent, non-partisan and mindful of all relevant conflict of interest issues.<sup>262</sup> In the case of NACS, political commitment quickly faded after the initial consultation process. There were no efforts to identify the costs of specific reforms, much less available resources or capacities. Furthermore, DP support diminished as soon as the document was drafted. Although the expatriate Project Manager returned for a limited period as a strategic advisor to implementation, this role was never institutionalised permanently within NAB. Therefore, the NACS remained an ambitious, broad-based set of recommendations rather than the living document needed to drive a sustainable, strategic reform agenda.

### 3.4 Role of development partners

As indicated earlier, the NACS has never been the focal point for DP anti-corruption activities in Pakistan. Since DFID’s initial infusion of funding, the ADB has provided significant technical support for the NAB’s own internal restructuring in accordance with NACS recommendations. However, most activities involving development partners with corruption control elements – for example, the Access to Justice Project and public financial management reforms – have been pursued outside the framework of NACS.

Part of the explanation for DP disinterest relates to the geopolitical environment into which the NACS was launched. Development partners were preoccupied at that point with “Musharraf’s role in protecting us from Al-Qaeda”, as one person described it. Physical insecurity, especially following increased tensions with India, contributed to considerable turnover of expatriate staff in the various DP agencies and a lack of long-term vision. As the NACS project came to a close in September 2002, DFID did try to organise a DP forum to stimulate broader support for segments of the strategy. However, this plan never came to fruition. As a result, an important incentive for ministries to engage with the strategy – the promise of additional foreign funding – was not leveraged.

Furthermore, the DP emphasis on supporting state structures in Pakistan has meant that demand for reform was never consistently cultivated. Only recently have development partners begun to rectify their one-sided approach to the problem. Current diagnostic tools are breaking down risks by sector, engaging NGO service providers and academics to ensure that future reforms are based on robust

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<sup>262</sup> See TI’s Anti-Corruption Handbook, [www.transparency.org/policy\\_research/ach/strategies\\_policies/government\\_strategies\\_discussion](http://www.transparency.org/policy_research/ach/strategies_policies/government_strategies_discussion)

intellectual analysis.<sup>263</sup> The hope is also that more actors will be engaged in the creation and use of this new information, contributing to greater pressure on the government to show progress.

### 3.5 Interplay with related governance reforms and associated actors

The NACS does not refer to specific programmes but states in a general way that “the government will be aided in its anti-corruption effort by the enabling environment of other national government reforms, many of which reflect consistent messages around modernising public services, transparency, grass roots democracy, participation, deregulation, downsizing, meritocracy, social empowerment, decentralization and devolution” (NACS, 2002). In some areas, such as judicial reform, the Implementation Plan includes activities that were underway or planned by the Access to Justice Project supported by the Asian Development Bank. In fact, most of the dialogue with respect to this sector reportedly took place with the ADB rather than with the Ministry of Law, which is considered a particularly hierarchical and reform-resistant body. The key governance reforms in Pakistan, including police reform and the devolution process, are largely controlled at the provincial or district level. As a federal strategy, the NACS refers to these processes but was never integrated within them. Pillar II of the PRSP (on governance and devolution) simply describes the Strategy’s explicit anti-corruption measures (asset declarations, integrity pledges, and legislation) but does not link these tools with the fulfilment of core poverty reduction objectives (PRSP, 2003).

### 3.6 Factors that hindered implementation

#### Lack of political leadership

The NACS process was led by a military-led institution in a military-led country. The military regime itself was considered relatively clean. However, by the time the NACS project launched, Musharraf’s reputation had been compromised by the political manoeuvring required to ensure his election in 2002. Since that time, there have been more and more reports of interference in NAB’s work, including the recent sugar price scandal.<sup>264</sup> Like its predecessors, the NAB is now widely perceived to be targeting political opponents and junior government officials. The need to engage in the political process has made the military government less willing to address publicly high level corruption associated with its own allies and members.

#### Structural constraints as a result of NAB’s contested authority

One of the biggest obstacles to implementation stems from the awkward relationship that NAB has vis-à-vis other ministries in the government. As one civil servant noted, its status as a military-led organisation means that “NAB can enforce not because it has line authority but because people are afraid of it”.<sup>265</sup> Since NACS was established, however, even NAB’s investigative activities have failed to instil the requisite respect for its power among other ministries required to implement broader anti-corruption reforms. Part of this is because NAB’s credibility as an impartial institution has faltered. Even in its early days, it lost considerable goodwill by pursuing shady investigative practices, such as holding suspects in custody for months, even years, without charge before finally releasing them. More generally, the fact that active military and senior judicial personnel are excluded from the ambit of the National Accountability Ordinance has made the organisation less

<sup>263</sup> These include a business study supported by ADB and surveys in the field of public financial management. Personal communication, ADB staff, March 2007.

<sup>264</sup> In this case, NAB announced that it would investigate the suspicious rise in sugar prices but did not follow through.

<sup>265</sup> Personal communication, former NACS team member, March 2007.

credible as an unbiased interlocutor. Financial bodies, such as the Security and Exchange Commission, are particularly reluctant to take advice from military authorities that have little economic experience.

#### Weak positioning of NACS within the NAB itself

In recent years, NAB leadership has de-prioritised the strategy and indeed the NACS Unit has been transformed into the Anti-Corruption Policy Unit staffed by a single person. The dedicated members of the NACS team have returned, for the most part, to their respective ministries or have gone on to other jobs. There is no core body, either within NAB or without, that has the capacity to coordinate the implementing agencies. In the absence of political will from the Chairman of NAB, there is little hope that the strategy will be revived as a reform framework in the near future.<sup>266</sup> The fact that most people outside NAB are not even aware of the NACS makes it unlikely that NAB will face pressure to promote the document more aggressively.

#### Lack of demand for reform from external actors

Another reason for the failure of NACS implementation is the weakness of parliamentary oversight and civil society engagement. In Pakistan, corruption enjoys little traction as a topic of public campaigning. Much more pressing, people say, is the basic illegitimacy of the military regime. As one NGO leader said, “people aren’t thinking about corruption; they are thinking about the Constitution being violated”.<sup>267</sup> According to him, the average Pakistani feels powerless to address high-level corruption, unlike more specific human rights issues around the environment or the treatment of women. Opportunities to engage service delivery NGOs have been underexploited, possibly because the impact of corruption on people’s health and livelihoods has not been adequately analysed.

#### Poor communication with the public

NACS was originally introduced through commercials on major TV channels, and through newspaper announcements.<sup>268</sup> In addition, popular talk shows have dedicated episodes to discussion of corruption, and two drama series on corruption have been aired. However, for most people the NACS remains very abstract, if they are aware of it at all. Even the director of the Human Rights Commission of Pakistan had not heard of the strategy when asked about it in mid-2007.<sup>269</sup> In addition, no resources were allocated for a long-term communications strategy, either for NAB or the NACS. The outreach that has been done focuses on spreading awareness of corruption’s harmful consequences, not of the government’s anti-corruption agenda.

#### Raised expectations not matched by supply of reforms

According to some, another problem relates to the disconnection between demand-raising activities, such as TV plays and radio announcements, and the perceived failure of enforcement by anti-corruption authorities. As long as most Pakistanis today believe that NAB investigation activities are politically motivated, increasing awareness simply feeds their cynicism about anti-corruption efforts in general. As one NAB official explained, “one bad case, or glaring omission, makes you

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<sup>266</sup> The new Chairman of NAB, who assumed his post in July 2007, has, however, indicated a desire to revisit NACS.

<sup>267</sup> M. Ali, personal communication, March 2007.

<sup>268</sup> Given Pakistan’s high illiteracy rate, however, newspaper ads only reached a limited audience.

<sup>269</sup> A. Jehangir, personal communication, March 2007.

lose all credibility even if you have 100 good cases on the books”.<sup>270</sup> The fact that the NACS is associated primarily with NAB has a direct impact on the strategy’s public legitimacy.

## 4 Lessons learned

The Pakistan case is unique in that the strategy was developed by a military-led institution, which had no legal power to enforce implementation and enjoyed little credibility among the civilian stakeholders. Despite the challenges that the NACS has faced, and its overly ambitious coverage, it continues to serve as a “menu of options” to inspire reform advocates committed to making a meaningful impact. It is not a “strategy” itself but can identify possible interventions for more focused approaches at the sectoral and sub-national levels.

Anti-corruption policies can easily collapse in the absence of a legitimate political process leading to their elaboration

While high-level expressions of support existed in the early stages of NACS development, they faded quickly once pressures for political compromise set in. However, it is doubtful whether the strategy could ever succeed purely through the decree of a military government. Unless the reform agenda emerges as a result of political processes, observers argue that its prospects are necessarily short-lived. Some argue that the ideal home for a national strategy would be in the Prime Minister’s Office rather than an executive body like the NAB. Indeed, successful reforms that have taken place at the sectoral level, such as the Islamabad Traffic Police reform (see below), have all been PM-led initiatives.

The NIS model failed to capture appropriate entry points for anti-corruption measures

The National Integrity System (NIS) concept was introduced in Pakistan by external consultants and supported by Government of Pakistan team members.<sup>271</sup> At the time this approach seemed appropriate, as it was presumed to give the project greater legitimacy in the eyes of international stakeholders. In retrospect, the idea was compromised from the outset by demands to exclude certain key institutions, such as the military. Also absent were other important actors in the Pakistani context, such as religious authorities. In general, the focus on institutional risks rather than sector-specific ones resulted in a failure to connect with either political incentives or public interests.

There is a striking difference in tone between Parts 2 and 3 of the NACS, which describe the *specific* nature and impact of corruption in Pakistan, and Parts 4 and 5 outlining weaknesses in the NIS and setting forth a *comprehensive* framework for action. The strategy seems to treat all “integrity pillars” alike, looking to institutional leadership for the implementation of broad-based reforms. By promoting international best practice in a technical sense, the NACS developed outside the economic and political realities within which implementation must proceed. From the beginning, then, the document took on an aspirational character that undermined the prospects for delivery of real reforms.

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<sup>270</sup> Personal communication, NAB officer, March 2007.

<sup>271</sup> Personal communication, former NACS team member, March 2007.

### Where to start? Creating “islands of integrity”

In recent years, successful reform efforts have tended to take place within sectors concerned with the **communications infrastructure**. The well-known Motorway Police and Islamabad traffic police examples demonstrate that better working conditions, monitoring and training can improve service delivery and reduce corruption. In these cases, incentives were strong for the Government of Pakistan to establish an “island of integrity” on well-travelled and high profile roads. Recent efforts to develop sectoral corruption risk assessments can be very helpful in mapping out particular priorities for future reforms. Involved development partners may be able to push for stronger transparency measures within the design of individual interventions.

### Broad consultations are not enough to create sustained demand for reform

While the NACS consultation process was unusually broad, key groups of stakeholders – particularly outside the government – were not systematically brought into the policy process. The involvement of groups outside the administration could have ensured a longer lifespan for the strategy by creating a more sustained demand for reform. Several of the major transparency NGOs in Islamabad, for example, reported during the course of this research that they were never consulted, much less asked to provide meaningful input. In light of the fact that corruption affects the interests of most **civil society** groups in Pakistan, an opportunity to leverage civil society action around monitoring and advocacy was missed.<sup>272</sup> Even the emergent entrepreneurial business community, for example, could be involved as corruption directly blocks their access to markets. In the future, a growing focus among the human rights community on the **right to transparent governance** could be leveraged to create additional synergies.<sup>273</sup>

As one of the NACS team members noted, **politicians** were intentionally excluded from the process of strategy development. This omission has had clear consequences for the strategy’s prospects of success. Political parties could have been engaged even in the absence of formal presidential support. Backing by individual parties could have brought not only corruption but alternative approaches to addressing it to the fore of public debate.

Finally, with the exception of DFID **development partners** were also largely absent from the policy process. Although discretion was essential during the initial phases, certain aspects of implementation could have clearly been facilitated if the donor community had committed to the process in larger numbers. In a sense, the “top down” approach that the NACS team took to strategy development is consistent with development partners’ own emphasis on building an “effective state” in Pakistan, so it is perhaps not surprising that voice mechanisms outside the state apparatus were largely overlooked. Institutionalising a monitoring capacity within parliament and civil society would probably have prolonged the life of the strategy. Recent initiatives to support policy-oriented research within academic institutions may help ensure that future reforms are based on robust intellectual analysis.

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<sup>272</sup> Because of the weaknesses within civil society outlined earlier, greater civil society engagement would probably have required active efforts on the part of the donor community to build advocacy and monitoring capacities.

<sup>273</sup> According to the Discussion Note on Right to Transparent Governance (Roy, Dreze and Dey, 2007), the right to transparent governance can be summed up in two basic principles: the state’s obligation to disclose and people’s right to make informed choices.

Supply of reform requires commitment and capacity among implementing agencies, as well as the possibility of ongoing advice and support

Although senior officials were widely consulted during the development of NACS, they were not involved to the degree that they felt any ownership of the process. Team members seconded from relevant ministries did not possess the requisite authority to push a policy agenda. One way of increasing the engagement of senior officials would have been to support the intra-agency development of sub-strategies based on the analysis already conducted by the strategy's authors. More importantly, however, it would have been helpful to identify those individuals with the most to gain – in terms of prestige or monetary support – from implementation (see below, on incentives for key actors). “Quick wins” in the action plan could then be based on indications of concrete commitment by the responsible agency.

In Pakistan, the policy unit of the NAB is severely understaffed, and no one is really equipped to provide ongoing technical advice to implementing agencies. There is also no forum for reformers to share experiences and lessons learned other than the dysfunctional Implementation Committee. To the extent that federal agencies are interested in implementation, they would benefit from a support unit that could advise on possible approaches based on international practice. This could be housed within the anti-corruption agency, another government body, or even an independent institute.

Comprehensive policies at the national level may have limited impact on key services in decentralised government contexts

In Pakistan, the topic of corruption became too sensitive for the national leadership to tackle over the course of the strategy development. On the other hand, high-profile initiatives such as devolution and police reform – which obviously have anti-corruption components – remained dominant on the national agenda. This changed environment had both political and practical implications for the strategy's implementation prospects. First, the federal agencies tasked to implement anti-corruption reforms often had little real influence over interventions in most of the key sectors covered by the strategy. While there is still value in a coherent national framework, broad elements of reform could have been supplemented by provincial-level plans that localised specific interventions in their appropriate context. In Pakistan, some informants also felt that it would be easier to capture political support – as well as the public imagination – at the local level. After two-and-a-half years of discussion, for example, anti-corruption has become one of the pillars for dialogue between DFID and Punjab Province.

Without consistent communication and monitoring, momentum for implementation can fade

In the Pakistani case, monitoring consists of self-reporting carried out through occasional meetings of the Implementation Committee. In every sense this structure fails to ensure adequate follow-up by responsible agencies. Robust monitoring processes are predicated on the existence of meaningful indicators as well as access to adequate information – neither of which are provided for by the NACS. Moreover, communication of the policy framework and its requirements – to government actors as well as the broader public – demands its own continuous, well-resourced strategy. To avoid contributing to greater public cynicism, information should be carefully managed to provide a balanced view of the government's anti-corruption activities, and concrete achievements should be publicised proactively. Ideally, public forums could be established at even the district level, where people could ask questions and receive information about the kind of recourse available when their rights are violated.

Institutional safeguards are required to protect anti-corruption policies from political changes

The experience of the NACS underlines the need to think long-term when designing anti-corruption policies and to build in measures that ensure they survive changes in shifting political winds. To a large extent this means involving a broader group of stakeholders, including political parties, and identifying priorities that resonate with a cynical public. Communication of the strategy, to all stakeholders, should be institutionalised within the strategy and allocated a concrete budget. The ability of responsible agencies to produce and publicise relevant information on implementation is another factor that needs to be carefully considered in the early phases of policy development.

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Anti-corruption policy making in practice:

## Tanzania – A Country Case Study

Karen Hussmann and Max Mmuya

**U4 REPORT 1:2007 PART 2E**



## Contents

<b>ACKNOWLEDGEMENTS .....</b>	<b>174</b>
<b>1 COUNTRY BACKGROUND.....</b>	<b>175</b>
1.1 RECENT POLITICAL LANDMARKS AND MAIN GOVERNANCE REFORMS.....	177
1.2 SCOPE OF CORRUPTION IN TANZANIA.....	178
1.3 HISTORY OF ANTI-CORRUPTION INITIATIVES AND INSTITUTIONAL FRAMEWORK .....	179
1.4 MAIN PLAYERS.....	181
<b>2 THE FACTS OF ANTI-CORRUPTION POLICY-MAKING.....</b>	<b>184</b>
2.1 ORIGIN AND RATIONALE OF THE NATIONAL ANTI-CORRUPTION STRATEGY AND ACTION PLAN (NACSAP).....	184
2.2 DESIGN OF NACSAP .....	184
2.3 PROVISIONS FOR IMPLEMENTATION .....	187
2.4 SUPPORT OF DEVELOPMENT PARTNERS FOR NACSAP DESIGN .....	189
<b>3 ANALYSIS.....</b>	<b>190</b>
3.1 CONTEXTUAL FACTORS THAT FAVOURED OR IMPEDED ANTI-CORRUPTION POLICY-MAKING.....	190
3.2 MAIN DRIVERS OF CHANGE .....	191
3.3 RATIONAL AND POLITICAL UNDERPINNING FOR NACSAP .....	193
3.4 ROLE OF DEVELOPMENT PARTNERS.....	193
3.5 INTERPLAY WITH RELATED GOVERNANCE REFORMS AND ASSOCIATED ACTORS.....	195
3.6 FACTORS THAT FACILITATE OR HINDER IMPLEMENTATION .....	196
<b>4 LESSONS LEARNED.....</b>	<b>198</b>
<b>5 BIBLIOGRAPHY .....</b>	<b>201</b>

## Acknowledgements

This case study is part of a broader research project of the U4 Anti-corruption Resource Centre called “Anti-corruption policy making in practice – what can we learn from national strategy/policy experience?” The main objective of the project is to provide insight, based on investigations in six countries, into how and why national anti-corruption policy frameworks are designed, who the driving forces are, which factors promote or impede implementation, and the role of development partners in the overall process. Its findings will contribute to the ongoing debate on how to implement Article 5 of the United Nations Convention against Corruption (UNCAC).

The country case study of Tanzania focuses specifically on the National Anti-corruption Strategy and Action Plan as an expression of the country’s nationwide anti-corruption policy framework. Other anti-corruption policies or measures are touched upon but are not at the centre of the analysis. The case study was produced on the basis of qualitative interviews with a broad range of key interviewees in each country and a literature review, including key policy and reform documents as well as political analysis. The authors would like to thank Brian Cooksey, Lucy Koechlin, Jessica Schultz, Geir Sundet and Jack Titsworth for their insightful comments on earlier drafts of this study, in addition to all those who have generously provided their expert knowledge, political insights and time to contribute to this undertaking in Tanzania. We sincerely hope that the content will be useful for further anti-corruption initiatives in Tanzania as well as in other countries struggling with similar corruption challenges.

# 1 Country background

The post-independence United Republic of Tanzania (URT)<sup>274</sup> has followed a distinct path of nation-building in Africa which has – with the exception of Zanzibar – resulted today in a country characterised by its peaceful and united society, political stability and sound macroeconomic performance, but also by incomplete transitions in its political and economic systems and a structural lack of accountability (Barkan, 2000; Hyden, 2005).

At independence, Tanzania had inherited a market-based economic regime and adopted the Westminster type of competitive multi-party parliamentary system. However, the “father of the nation”, Mwalimu Julius Nyerere, began to develop his ideas of *ujamaa* socialism and in 1965 the country became a de jure single party state and a socialist economic system was proclaimed two years later.<sup>275</sup> Independent organisations in civil society, in particular trade unions, were neutralised by being brought into the ruling party (Kelsall and Mmuya, 2005). The economy was largely nationalised, a huge village resettlement programme was carried out and Kiswahili was adopted as the national language.

Following the collapse of the national economy, in 1986 Tanzania entered formally into agreements with the World Bank and IMF for structural adjustment packages which reintroduced a market-based economic system. Macroeconomic reforms under President Ali Hassan Mwinyi reversed the course of economic collapse, but these reforms also became vehicles for personal enrichment by bureaucrats, party officials and their allies in the business sector (ARD/USAID, 2003). This enrichment was facilitated when the ruling party abandoned the Leadership Code, calling into question its original, socialist objectives and ideals (see section 1.3). Donor unease culminated in 1994 when aid was suspended following revelations of massive misuse of import support funds (Kelsall and Mmuya, 2005).

To avoid a looming legitimacy crisis, the party leadership decided to open up the political system but finally opted for only minor constitutional revisions that were endorsed by parliament in 1992. Although these constitutional amendments legalised political parties, they left intact powerful political control mechanisms and institutions adapted to the single-party state (ARD/USAID, 2003). In practice, the country’s political system and bureaucracy remains dominated by the same omnipresent ruling party.<sup>276</sup>

Tanzania today features a semi-presidential system with elements of the Westminster parliamentary model. The president is elected by direct vote while the government is formed from members of parliament. The constitution vests enormous powers in the executive, and presidential power was further increased in 2000 by restoring the right to appoint 10 members of parliament, and by providing that the president needed to be elected by simple majority only. This encourages a

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<sup>274</sup> Mainland Tanganyika became independent from British colonial rule in 1961, Zanzibar in 1963 and both unified to become Tanzania in 1964. Mainland Tanzania and Zanzibar have distinct political institutions (each has a president, a legislative assembly and a public administration, among others) and certain political, economic and ethnic tensions have simmered for a while. Despite the importance of these phenomena, mainland Tanzania is the study object.

<sup>275</sup> “Ujamaa” – a Kiswahili word for “familyhood” – refers ideologically to a socialism based on village cooperatives.

<sup>276</sup> An observation in Afrobarometer Paper No. 18 concludes that “...Tanzania’s transition away from socialist one-party rule toward multiparty democracy has made considerable progress, but it remains incomplete. In many ways, it has been marked by continuity and evolution of the governing regime, rather than regime change...”.

concentration of decision-making at the top, which is further increased by a legacy of treating presidential criticism as disloyal (Barkan, 2000; ARD/USAID, 2003).

Parliamentary supremacy is largely considered to be formalistic and the ruling party CCM (acronym for Chama Cha Mapinduzi), which has basically been in power since independence, enjoys a hugely dominant position favoured, among others, through election and party financing systems. Within CCM, power is understood to be distilled and concentrated further within the Central Committee of 18 members, who are elected at periodic party congresses.

The independence of the judiciary is also limited in so far as administrative and financial decisions are dependent on the executive, and the lower courts in particular are perceived to be massively corrupt. Nevertheless, the higher courts have asserted their independence in recent years through some landmark rulings against the overt interests of the executive.<sup>277</sup> In most of these cases, however, the executive, with the assistance of the legislature when needed, has effectively overturned the courts' findings (ARD/USAID, 2003).

#### A brief look at Tanzania's progress in governance

Tanzania, with a population of 38.3 million, remains one of the poorest countries in Sub-Saharan Africa with a per capita income of USD 340, a life expectancy of 46.3 years (down from 53 years in 1985, mainly because of HIV-AIDS) and a largely rural population (World Bank, 2005). Despite concerted efforts over years and a massive influx of donor funding, progress towards achieving the overarching goal of poverty reduction has been modest as income poverty decreased only slightly from 38.6% in 1992 to 35.7% in 2002 (NSGRP, 2005). So how does the country fare in terms of its governance system, given that good governance has been widely acknowledged as a necessary if not a sufficient precondition for overcoming poverty?

At first sight, Tanzania has made important progress, in particular in the consolidation of its economic performance. Macroeconomic indicators, like per capita growth, inflation, and revenue as a percentage of GDP, have consistently improved and the public financial management system has been notably strengthened (Mkukuta, 2006).<sup>278</sup> The country has also maintained political stability (with the exception of simmering conflicts in Zanzibar), has held three general elections since the return to multi-party democracy and has set out on an ambitious reform programme package for the public service, public financial management, local government and the legal sector.

At second glance, however, this brightly painted picture becomes more opaque. Fiduciary risks in some areas remain worrisome, in particular in the realm of public procurement, revenue collection, internal and external auditing, and money transfers from central to local government (PEFAR, 2005 and 2006). Elections are considered as free but not necessarily fair with increasing trends to electoral corruption (Cooksey, 2005; Global Integrity, 2006);<sup>279</sup> the establishment of accountability

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<sup>277</sup> One such case was the ruling in 1995 by the High Court in Dodoma declaring that Tanzanian citizens had the right to contest for the posts of president, member of parliament and councillor without being forced to join any political party. When the government tried to amend the provision to make it mandatory for candidates in an election to belong to political parties, in 2005 the High Court in Dar es Salaam endorsed the original declaration.

<sup>278</sup> For example, an integrated financial management system has been introduced, and the procurement law has been reviewed twice (2001 and 2004) and is now in line with international standards.

<sup>279</sup> The temporary legalisation of "takrima" in 2000 (this term refers to traditional hospitality and is used in the context of elections when candidates make offerings to potential voters like handing out T-shirts, food rations and the like) contributed to further eroding the integrity of political parties and candidates. The National Elections Act No 4 of 2000 was protested against and it was claimed that the provisions encouraged

and watchdog institutions seems to have been limited to their formal existence. And the summarised findings from a recent study on monitoring power in Tanzania<sup>280</sup> indicate among other things that:

- Government operations are driven more by patronage and on the basis of clientelistic network dynamics rather than by following rational policy considerations, which leads to slippage in implementation and leaves the state without a coherent sense of direction;
- Reinforced through the General Budget Support (GBS) provided by the development partners (DP), there has been a shift of power in the direction of the President’s Office and the Ministry of Finance, leaving other ministries and local governments with reduced influence over policy;
- The executive branch of government consults the legislature more as a formality than a duty, leaving parliament with little, if any, corporate influence over policy;
- The overlapping structures between the CCM and the state impair both vertical and horizontal accountability.

## 1.1 Recent Political Landmarks and Main Governance Reforms

Unlike the situation in other countries of the region, Tanzania has enjoyed a high degree of political stability and for that matter continuity of public policy. To a large extent, this has been possible due to the de facto single-party regime. The declared political meta-goal has been growth and poverty reduction for years and is anchored in the National Strategy for Growth and Poverty Reduction (NSGPR) or Mkukuta (2005).<sup>281</sup>

The first multi-party elections brought Benjamin Mkapa to power (1995-2005), who inherited from his predecessor a largely non-functioning government machinery, in which corruption had spiralled out of control. President Mkapa, also called “Mr. Clean” during his election campaign, focused his political agenda on three broad streams: i) poverty reduction and growth, ii) service delivery, and iii) anti-corruption and accountability.

Mainly responding to the pressure of the international community, the Mkapa government developed a National Framework for Good Governance (NFGG), which encompassed the core reforms already under way at the time:<sup>282</sup> i) public sector reform, whose first phase focused on the rationalisation of the public service, the elimination of ghost workers, restructuring of public agencies, etc., while the second phase still under way centres on merit-based recruitment and promotion systems, performance-based management and the like; ii) public expenditure and financial management reform; iii) a legal sector reform; and iv) local government reform. This set of complex and far-reaching reforms has been expected to have a direct bearing on increasing accountability and transparency, to reduce opportunities for corruption and to form public officials

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corruption in the electoral process. The High court ruled in favour of the petitioners and against the Attorney General, who had defended the government.

<sup>280</sup> Max Mmuya (2007), *Monitoring Power*, a report submitted to the Swedish International Development Agency (SIDA).

<sup>281</sup> The Mkukuta follows and builds upon the earlier Poverty Reduction Paper as developed under the HIPC initiative.

<sup>282</sup> The development of this good governance framework was led by UNDP and was more an exercise in making development partners happy than strategically laying out the government’s priorities. The document is useful in summarising the important components of the key reforms of the time but has not made much impact, if at all.

who are accountable, efficient, ethical and professional.<sup>283</sup> The development of a National Anti-Corruption Strategy (NACSAP) has to be understood, and will be analysed, within the framework of these broad governance reforms.

Nevertheless, the Mkapa government suffered from a series of major corruption scandals and the integrity of the President himself has been recently questioned.<sup>284</sup> After leaving office, Mkapa, who had publicly declared his assets upon becoming President in 1995, was challenged by an outspoken journalist to declare his current assets. As a result, the journalist, of Rwandan origin but who was born and had lived his life in Tanzania, almost lost his citizenship, and the current level of Mkapa's wealth remains a mystery.

More importantly, though, a number of systematically researched reports and investigative journalism stories have started to shake the hypothesis of some development partners that corruption in Tanzania is not so bad as to compromise the overarching goals of economic growth and poverty reduction (see section 1.2.). These reports confirm the existence of large-scale corruption schemes and entrenched sector-wide corrupt networks, involving not only the local political and business elites but also international companies and entrepreneurs.

Against this context, the political agenda of the current President Kikwete (2006-2010) has as yet to be consolidated. Political analysts identified mixed signals emanating from the new popular and allegedly populist president, who enjoys broader party support than his predecessor. On the positive side figure the appointments of two well-regarded professionals as heads of the Prevention and Combating of Corruption Bureau (PCCB) and the Auditor General's office respectively, as well as the support for a nation-wide governance and anti-corruption baseline study. On the negative side, however, is the government's crack-down on critical voices in public debates,<sup>285</sup> the resistance to granting the PCCB prosecutorial independence in the recently approved new anti-corruption bill and the lack of follow-up to the Auditor General's reports.

Finally, it needs to be noted that the shift to General Budget Support as the modus operandi for the delivery of development assistance, which constitutes around 40% of the national budget, has led to major changes in power relations and accountability structures (see section 1.4).

## 1.2 Scope of corruption in Tanzania

Providing a snapshot of the true scope of corruption in Tanzania today or attempting to show trends in its development is a formidable challenge in the absence of regular assessments at the national level. However, when examining available data and analytical reports, the picture that emerges following more than 10 years of a public anti-corruption agenda is rather grim. While some progress has been registered in the control of petty corruption, there is increasing evidence of entrenched networks of grand corruption and state capture. A closer look at these seemingly opposing trends lends support to the hypothesis that in Tanzania, as in many neighbouring countries, predatory political and economic elites have continued to take root since first evidence on their existence was published in the Warioba Report of 1996.<sup>286</sup>

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<sup>283</sup> See *The National Framework on Good Governance*, President's Office, GGCU, Tanzania (1999).

<sup>284</sup> Such as the alleged corruption of USD 40 million in a radar system bought from British Aerospace, the USD 60 million Bank of Tanzania Twin Towers or the complex IPTL power supply contract involving the national power company Tanesco and several foreign companies (Cooksey, 2005).

<sup>285</sup> The CCM disciplined its members in recent budget discussions, prohibiting critical questions on contentious issues.

<sup>286</sup> This report was produced by a Presidential Commission of Inquiry set up by President Mkapa (see section 1.3).

First the positive news: the most recent Afrobarometer Briefing Paper (April 2006) states that “... overall, the findings (for Tanzania) suggest that the government may be achieving at least modest success; public perceptions of its efforts to combat the problem are improving, while reported experiences with corruption appear to be on the decline...”. For example, the perception of corruption in the police force has declined from 80% in 2003 to 72% in 2005. The World Bank Institute’s governance indicators (1996 to 2006) place Tanzania in a group of countries that have experienced improvements.

On the other hand, recent research confirms systemic, large-scale corruption and state capture. An in-depth study of governance-related issues in the forestry sector by Traffic International (2007) revealed that different corrupt practices of national and international networks lead to an estimated loss of 96% of the potential revenue due, an estimated annual loss of USD 58 million at the national level. Another explosive report on corruption in the wildlife sector not only estimates the loss in foregone revenue in hunting licences but also names the political-bureaucratic-domestic and foreign business network that dominates the sector.<sup>287</sup> Interestingly, high-level corruption in the allocation of hunting blocks had been singled out earlier by the Warioba report. Last but not least, the Bank of Tanzania has been involved in two major scandals, one concerning the grossly overpriced construction of a new building for the Central Bank and another allegedly costing the treasury around USD 200 million in misappropriated funds from a foreign exchange account.<sup>288</sup> The latter caused the IMF to intervene and pressure for an independent audit of the allegations.<sup>289</sup> These scandals, together with the IMF’s estimates in 2003 that Tanzania loses yearly USD 300 million in public procurement (Cooksey, 2005) reconfirm the findings of the Warioba Report that “the greatest source of corruption in the country is neither the poor economy nor the low salaries... The greatest source is the lackadaisical leadership overseeing the implementation of established norms”. And a more recent study states that “[t]he core governance issues in Tanzania revolve around the escalation of corruption, limited accountability and transparency...” (ARD/ USAID, 2003).

The above suggests that an assessment of the scope of corruption is subject to various views. The official position of the government and most development partners has been that Tanzania has improved its control of corruption, while local analysts, including the informal views of development experts, are clearly concerned about the apparent increase and entrenchment of grand and political corruption.

### 1.3 History of anti-corruption initiatives and institutional framework

#### History of anti-corruption initiatives

Tanzania can look back on a relatively long track record of anti-corruption and pro-integrity measures since its independence. The first effort to control corrupt practices, at a time of limited virulence of this phenomenon, was the creation of the Permanent Commission of Enquiry (Ombudsman) in 1966. Also, in 1971 the government passed a Prevention of Corruption Act initially administered by the police. A special Anti-Corruption Squad was created within the police

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<sup>287</sup> This originally confidential report, which a small group of development partners had channelled to the government, was leaked to the public and circulated over the internet, although the authors have not been identified.

<sup>288</sup> The scandal of the Bank of Tanzania building was first raised by the Shadow Minister of Finance on 18 June 2007 following the Budget presentation by the Minister of Finance (“This Day” – 19 June 2007). The Twin Towers were built on an area of just 40,000 square metres at a total cost of USD 340 million or USD 8,000 per square metre.

<sup>289</sup> Tanzanian newspaper report published in *This Day*, 29 June 2007. In December

force – itself a significant source of corruption – in 1975. Following a study tour to Singapore, more independence and clearer accountability was achieved by moving the Squad into the President’s Office.

Further, in 1967 a Leadership Code was introduced specifying conflict of interest rules and prohibiting party and government officials from engaging in any private business, limiting severely the ability to earn wealth through the hiring of labour or renting property, and discouraging private capital accumulation and investment by the smallest and largest businesses alike. In 1973, an enforcement committee was established to oversee compliance. By the early 1990s, with the raising of the minimum wage, the Code applied to all employees in government or government-owned enterprises (Tripp, 1997).

Following a damning government report on corruption in 1989, two commissions to look into how to remedy the situation in the civil service and the party respectively were established. However, little follow-up was made, partly due to upcoming elections in 1990 and partly due to rising inflation, which became the main political agenda point for the next few years.<sup>290</sup> Further, in 1991 the Leadership Code was abandoned, allegedly paving the way for more openly exercised corrupt practices.

A new Code of Ethics came into being only in 1995 and that same year, in an unprecedented move, President Mkapa publicly declared his assets before the elections to lead by example. But the Attorney General swiftly “saved” other leading officials from having to do the same by stating that there was no legal basis requiring assets to be declared publicly (ESRF and FACEIT, 2002).<sup>291</sup> Upon assuming office in 1996, President Mkapa established the Warioba Commission to inquire extensively into corruption at all levels and throughout the country. Justice Warioba concluded that “[t]here is no dispute that corruption is rampant in all sectors of the economy, public services and politics in the country”. He handed 70 names to President Mkapa, who predicted that there would be twenty prosecutions; however, none has ensued.<sup>292</sup> The Commission’s damning report on forms, locus, causes and remedies for corruption has been the blueprint for anti-corruption work in Tanzania but its main recommendations to clean the leadership from the top have not been implemented to date.

### Institutional and legal framework

Tanzania has a multitude of public institutions tasked with different aspects of corruption prevention and control:

1. the Prevention and Combating of Corruption Bureau (PCCB), with a three-pronged mandate to investigate corrupt practices, promote preventive measures and raise public awareness;<sup>293</sup>
2. the Ethics Secretariat to administer the declarations of assets and eliminate conflicts of interest amongst elected public officials as well as senior members of the civil service;
3. the Inspectorate of Ethics within the President’s Office, Public Service Management (POPSM), which is charged with controlling corruption in the rest of the public service;

<sup>290</sup> Interview with key interviewee.

<sup>291</sup> Declarations of assets have to be registered with the Ethics Commission. But access to them is subject to a number of restrictions, making public scrutiny more than difficult.

<sup>292</sup> Daily News (Dar es Salaam), 11 December 1996.

<sup>293</sup> Until the recent amendment of the anti-corruption law (2007), the Prevention and Combating of Corruption Bureau (PCCB).

4. the office of the Director of Public Prosecutions (DPP), which is responsible for prosecuting those who have allegedly committed corrupt acts;
5. the Commission for Human Rights and Good Governance (CHRGG), the successor to the Ombudsman office;
6. the National Audit Office (NAO); and
7. the Good Governance Coordination Unit (GGCU) in the President’s Office, which was originally established to coordinate all reforms under the national good governance framework but whose focus was redirected to the coordination of anti-corruption initiatives.

Consequently, there does not seem to be a “centre-of-government” structure that is coordinating the major institutions that need to work together to combat corruption. And it is hardly surprising that there is a considerable overlap of mandates as well as potential for rivalry between these institutions (Barkan, 2000). Another noteworthy aspect of this complex web of institutions is that they all report directly or indirectly to the President, even the Auditor General, which raises important questions about independence, in particular in a context where political interference is reportedly omnipresent.

In terms of its legal framework, Tanzania has recently adopted a new anti-corruption law (2007), which was meant to bring national standards into line with the international treaties to which Tanzania is party. Although the bill incorporates definitions of more corrupt practices and empowers the PCCB in some of its functions, two critical aspects were not amended: i) the dependence on the approval of the DPP to launch prosecutions; and ii) the reversal of the burden of proof.<sup>294</sup> Further, the Finance Act (2001) and Public Procurement Act (2004) are considered important milestones in reducing opportunities for corruption, although their full application and effectiveness in practice has still to be proven. Tanzania has also signed and ratified the UN Convention against Corruption.

In addition, some important pieces of “anti-corruption” legislation are either flawed or as yet non-existent. Thus the Code of Ethics imposes demotivating restrictions such as the presentation of formal requests and payment of fees to get access to the declarations of assets of senior officials,<sup>295</sup> the NGO law follows the spirit of government control, an attempt to curtail media freedom through a new law was recently fended off, and whistle-blowing and access to information acts are still missing altogether.

## 1.4 Main players

### Political parties

Tanzania is *de jure* a multi-party but *de facto* a one-party state. Although 18 political parties have been founded since 1992, they have not been able to form a noteworthy opposition to the ruling party CCM (Chama Cha Mapinduzi), which has governed the country since independence. The resulting lack of political competition can be attributed to the following main factors: i) the election

<sup>294</sup> The new law has also been criticised for apparently prohibiting journalists and MPs from publicly discussing cases that are being investigated by PCCB. Political corruption is also not covered under this law. See [www.ippmedia.com/ipp/guardian/2007/08/13/96296.html](http://www.ippmedia.com/ipp/guardian/2007/08/13/96296.html)

<sup>295</sup> Leadership Code of Ethics Act, 1995 and Reaction by the Tanzania Human Rights Report 2005, page 106.

and party financing system favour the dominant party,<sup>296</sup> ii) vocal opposition leaders are bought or brought back into the CCM or otherwise “silenced”<sup>297</sup> and iii) a lack of capacity amongst minority parties to form sustained coalitions. The ruling party itself can be characterised as sub-divided into different factions and internal party elections are said to be fraught with corruption. The current President has vowed to curb corruption in precisely this area but, given the power of some of the party factions, it remains to be seen whether he will be able to follow through on these intentions.

### Parliament

Tanzania’s parliament (Bunge) comprises 323 members, of whom 84% belong to the CCM and only 14% are distributed among four opposition parties. Hence, the ability of the Assembly to assume the oversight role of a modern legislature is limited (OPM et al., 2005). Due to weak technical capacities and the lack of research support, the Bunge has yet to played a proactive role in the policy-making processes. Ironically, there was more open debate under the one-party state than today, as external competition has led the CCM to discipline or sanction “dissidents”. CCM party discipline has a strong influence on voting patterns within Parliament and the party caucuses can dictate how the MPs vote (OPM et al., 2005).<sup>298</sup> In more recent times some opposition members have courageously brought to light suspicious deals and budget decisions but the effects of this are not yet manifest. To date, the Executive, the President and a small number of senior ministers continue their close control of power (Barkan, 2000).

### Bureaucracy

Tanzania’s state institutions are characterised by weak organisational and individual capacities with relatively low levels of education and increasing difficulties in attracting competent staff from a more competitive private market. Despite more than 10 years of public service reform, the predominant logic within the civil service continues to reflect the principle of “Kulindana” (mutual protection from reporting of malpractice in view of future individual benefits) and is based on patronage considerations. Further, more often than not disciplinary measures are not taken. The Auditor General has noted the pervasiveness of a weak culture of compliance within government linked to the absence of sanctions for offenders (Barkan, 2000), which has been reconfirmed in the State of the Public Service Report (2004). Finally, the party state has not yet been dismantled. For example, certain public service positions are only open to members of CCM (ARD/USAID, 2003).

### Networks (mitandao)

The continued centralisation of political power has facilitated a deepening convergence of political, public service and economic elites into networks. This situation is currently setting off alarms in respect of some of the country’s natural resource bases, whose assets are perceived as being exploited on a large scale and to be the direct source of ill-gotten gains and resource rents.

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<sup>296</sup> Tanzania is characterised by a disparity between votes and seats as a result of its first past the post (FPTP) system of electing the National Legislature from single member districts. The practice, inherited from the British, invariably magnifies the proportion of seats won by the largest party.

<sup>297</sup> Important public figures “deserting” to the opposition have been offered leading party or public positions and in the case of critical media organs, some of them, such as the Habari Corporation, have been bought by party tycoons.

<sup>298</sup> In the budget discussions of 2007, for example, a party caucus called critical CCM members to order.

## Civil society

The renaissance of civil society since the return to multi-party politics in 1992 is “one of the most significant political developments of this period, perhaps more important than the emergence of opposition parties” (Barkan, 2000). Still, compared with most neighbouring countries, civil society in Tanzania remains weak (OPM, 2005).<sup>299</sup> Civil society organisations (CSOs) are periodically subject to state restrictions to limit their influence, such as attempts by the government to regulate their activities or to exert pressure on CSOs to join umbrella networks that the government believes it can control. As a result, most CSOs are timid about openly criticising or demanding change from the political establishment. Nevertheless, some CSOs have been able to raise challenging questions about bureaucratic ineptitude, abuse of human rights, corruption, etc. Prominent examples include the activities of Haki Elimu (right to education), the Legal and Human Rights Centre (LHRC) and the Tanzania Women Lawyers Association (TAWLA).

## Private sector

The formal private sector in Tanzania is still relatively poorly developed and largely foreign dominated, with few indigenous or locally-based companies worthy of the name.<sup>300</sup> Only about 2% of the country’s 1.5 million businesses operate within the formal, legal system. And only some 11% of properties are held within the formal system. The private sector, both formal and informal, is usually averse to explicit contact and consultations with the political and administrative elite, and hesitant to criticise openly. Alleged sweetheart deals between the business and the politico-administrative elites during the privatisation process, procurement operations and party financing have led to a “conspiracy of silence”, while potential critical voices mostly do not dare to go public for fear of losing business with the huge state sector (Cooksey, 2005). However, the private sector has been keen on addressing issues related to corruption in business licensing, permits, procurement procedures, revenue collection, etc, although in a quiet way rather than by public deliberation because the latter “is not the Tanzanian way” and could be counterproductive.

## The media

Tanzania features a comparatively large and varied media landscape, with government, opposition and independently owned media organs.<sup>301</sup> The media has been hailed for its growing independence as well as courage in promoting critical public debate and in investigating major corruption schemes. Nevertheless, as in the case of civil society there have been persistent attempts by the government and the party to clip the media’s wings and bring dissident voices back in line, mainly through tight regulations by the government’s Directorate of Information and intimidation of journalists and media owners. Also, critical media organs have been bought by business tycoons belonging to the ruling party, investigative journalists have been seduced into better-paying PR jobs, and government advertising is used as a tool to exert economic pressure. Despite wide recognition of the media’s increasing strength, it is not clear to what extent efforts to expose high-level grand corruption schemes are producing any real response from the government or party.

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<sup>299</sup> Civil society organisations are largely urban-based and most of them tend to focus on service delivery activities, with only a few dedicated to policy advocacy. Concrete numbers are difficult to get but estimates have it that there are around 4,000 CSOs today in Tanzania.

<sup>300</sup> A distinct feature of the national private sector is that it can be mainly divided into two ethnic groups: the Tanzanian Africans, who formed the umbrella Tanzania Chamber of Commerce, Agriculture and Industries (TCCIA); and the Tanzanian Asians, who formed the Tanzania Confederation of Industries (CTI).

<sup>301</sup> There are today approx. 40 daily newspapers, 170 weeklies and 60 radio stations (Hansard Report, 2007).

## The development partners

Since Tanzania's return to a market economy in 1986 and multi-party democracy in 1992, the donor community has been at the centre stage of the country's development efforts. Tanzania is one of the largest aid recipients in the region with around 40% of the national budget financed through external resources and 80% of the development budget financed through Official Development Assistance (ODA).<sup>302</sup> Development partners (DP)<sup>303</sup> in Tanzania are relatively well coordinated, which has been largely helped by the shift of most of them to providing General Budget Support (GBS), which amounted to around USD 616 million in the financial year 2005/06.<sup>304</sup> The promotion of good governance and anti-corruption has been a key priority for many development partners over the past decade, and basket funds for different aspects of the national good governance framework have been provided. Nevertheless, the greater say and ownership of the government in deciding upon development priorities has also led to postponing several times good governance reform proposals brought forward by the DPs (interviews June 2007).

## 2 The facts of anti-corruption policy-making

### 2.1 Origin and rationale of the National Anti-Corruption Strategy and Action Plan (NACSAP)

During the government of President Mwinyi (1985-1995), who was nicknamed *Ruksa* (a Kiswahili word for "permit"<sup>305</sup>) *Mr Laissez-Faire*, corruption had spiralled so much out of control that it became one of the prime concerns of the population as well as sections of the old party leadership.<sup>306</sup> Hence, in 1995, the ruling party CCM selected a candidate who stood for integrity and anti-corruption, the so-called *Mr Clean* Benjamin Mkapa, for the first multi-party elections after decades.

Further, following a massive corruption scheme in the country's tax collection system, donors had frozen part of the international aid in 1994 and national commitment to improve good governance had become a crucial requirement for stepping up aid. Thus the government and party were concerned to send appropriate signals to the international community in order to re-attract their interest to supporting Tanzania's development.

### 2.2 Design of NACSAP

Conceptually and in terms of programme design, anti-corruption initiatives in Tanzania have been an integral part of the country's National Framework for Good Governance and are intended to build on and complement the four major reform packages (see section 1.3). In this spirit, the

<sup>302</sup> "Regional strategy for development cooperation with Tanzania 2006–2010", [www.regeringen.se](http://www.regeringen.se); "ODA management and aid effectiveness: the case of Tanzania. How much and how it is used", MoF Budget Speech, 2007.

<sup>303</sup> The concept of "development partner" was highlighted by interviewees confirming the shift from donor-recipient relations to a new "partnership" based on dialogue and agreement rather than imposed directions and conditions.

<sup>304</sup> See [www.tzdp.org](http://www.tzdp.org)

<sup>305</sup> This is a reference to the ease with which all necessary permits could be gained under his rule.

<sup>306</sup> Former President Nyerere came out as saying that "corruption in Tanzania is stinking" and played a pivotal role in supporting President Mkapa's internal party candidacy.

country's first National Anti-Corruption Strategy and Action Plan (NACSAP) was developed in 1999 while the process for the development of the second phase was symbolically launched on 9 December 2006, international anti-corruption day.

### Process and stakeholder involvement

In 1998, the government commissioned a team of consultants to assess progress made on the recommendations of the above-mentioned Warioba Report. The team argued that despite some positive developments the government had failed to obtain the support of the public for its anti-corruption efforts. As a result, the government engaged in a series of events to develop a more systematic anti-corruption initiative. Two high-level workshops were organised with the purpose of developing a Good Governance Action Plan (UNDP-sponsored) and an Anti-Corruption Plan (EU-sponsored) respectively.<sup>307</sup> However, the final and lasting initiative consisted in producing a National Anti-Corruption Strategy and Action Plan (NACSAP). A small team of experts was brought together which, with support from the World Bank Institute (WBI) and drawing on the Warioba Report, drafted a first strategy statement and action plan. The NACSAP covered seven priority areas and was formally approved by the Cabinet and Parliament in November 1999 (see below).

President Mkapa then instructed all Ministries, Departments and Agencies (MDA) to develop their own action plans in order to implement NACSAP with oversight from a specifically created Interministerial Committee (IMC).<sup>308</sup> Training workshops were held by the GGCU with MDA staff to encourage them to identify the areas most prone to corrupt practices within their ministries and design remedies accordingly. In each MDA, the Permanent Secretaries (accounting officers) nominated a focal person to assist in follow-up and monitoring of the action plans. However, the first action plans came under criticism from the donor community for a lack of strategic focus and for unrealistic assumptions about available funds (UNDP, 2003).<sup>309</sup> Given that corruption was one of the priority concerns of the development partners, the World Bank provided a consultant to try and help orient the process towards feasible action while the EU and DFID funded a series of workshops for MDAs to develop "second generation action plans". These were still of a rather mixed quality, the budget continued to be high and development partners remained sceptical about what these action plans might achieve. Interestingly, the first NACSAP was never officially launched in a public act.

Aware of the colossal task inherent in overseeing the implementation of MDA action plans, the Good Governance Coordination Unit (GGCU) was mandated to focus its coordination work on anti-corruption activities. The GGCU, in collaboration with NACSAP Focal Points and a consultant, agreed on the core functions of government that must work well if corrupt practices were to be minimized and then identified key indicators and formats for reporting on these functions.<sup>310</sup> The NACSAP Quarterly Reports focused on these functions for some time but GGCU did not have the

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<sup>307</sup> Both events seem to have been rather disconnected and little follow-up was undertaken as both action plans were overtaken by the new initiative of drafting an anti-corruption strategy and action plan (UNDP, 2003).

<sup>308</sup> The original IMC consisted of the PCCB as chair, the Director of Research of the PCCB as Secretary, the Ministry of Finance, the Civil Service Department, and the Planning Commission of the President's Office, Regional Administration and Local Government (UNDP, 2003). Later the GGCU representative became the Secretary.

<sup>309</sup> The total budget for implementation of the action plans exceeded USD 90 million.

<sup>310</sup> The core functions included human resources management, the rule of law and the administration of justice, economic management, including regulation, public financial management, public procurement management, revenue collection, oversight and accountability, and public facilities and assets management.

capacity to pursue this in-house. In the absence of a strong managerial culture at the centre of government, reports have withered on the vine.

Upon the finalisation of the first phase in 2004, NACSAP II was developed with the facilitation of the GGCU in a process similar to NACSAP I. This time, mainly upon the request of development partners, it was extended to all 120 local government authorities (LGA) in order to bring anti-corruption efforts closer to the ground and the people, but in practice it ran the serious risk of making NACSAP even less manageable and overburdening the already stretched capacities of LGAs.<sup>311</sup> Civil society organisations and the private sector were also invited to develop action plans for their sectors. The GGCU spearheaded the process through a series of training the trainer workshops to guide the “new” actors in elaborating their action plans and help the MDAs to do the same for the second phase of NACSAP. This time there seems to be even more scepticism as to the feasibility and manageability of what some describe as a “monstrous plan”.

### Knowledge base

One of the major building blocks in the design of anti-corruption initiatives in Tanzania was the famous Warioba Report on corruption, published in a courageous, trail-breaking and transparent move by the Mkapa government in 1996. This extensive investigation of corruption incidents around the country also contained an analysis of the key factors explaining the high and pervasive levels of corruption and laid out a set of recommendations on how to remedy the situation.

However, until today no baseline survey on corruption has been produced by either the government or other actors, despite concrete offers from the donor community to the government to finance such a baseline survey back in 2001.<sup>312</sup> The absence of such information continues to be one of the major challenges for measuring the often proclaimed progress in reducing corruption in Tanzania. Also, no scientific or technically sound, systematic, sector or agency assessments have been carried out to identify and prioritise the specific vulnerabilities to be addressed through the MDA action plans. Further, there seems to be little understanding about local attitudes towards different corrupt practices as defined in the international legal instruments.<sup>313</sup> And finally, an effort to produce annual State of Corruption Reports was limited to a one-time exercise in 2002 with no follow-up since.

Nevertheless, over the past six to seven years an important body of excellent analytical work on accountability systems and practices, power relations in the country, drivers of change, and other related issues has been produced by different agencies of the international community (see Bibliography). These reports point consistently to key problems in the country’s governance system, including grand and political corruption and its underlying failures. However, it is not clear to what extent these documents have been circulated and/or are widely accessible and there are no signs that they have contributed to the design and development of NACSAP II. Last but not least, there is a lack of corruption-related indicators (ESRFandFACEIT, 2002; UNDP, 2006) and routinely generated data does not allow measurement of progress in the control of corruption. Also,

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<sup>311</sup> The roll out of NACSAP to LGAs was one of the governance conditionalities in the Performance Assessment Framework. A key problem in LGAs is that financing flows, budgeting, reporting and monitoring systems are too complicated. Criticism has been raised of the fact that the LGA NACSAPs add another layer, risking making the confusion worse.

<sup>312</sup> A broad-based diagnostic survey was offered to the government in 2001 but declined. NACSAP had already been put in place, and the pressure from donors to do more had abated. Also, the Mkapa government was already in its second term, with a decreasing interest in anti-corruption work.

<sup>313</sup> For example, important issues, such as *what do Tanzanians think about using a public position to generate income for the party* or *what do Tanzanians think about the apparent need to be a party member if appointments for mid- to senior-level civil service positions are sought?*, have not been explored, nor their impact on ongoing reforms assessed.

practices aimed at increasing transparency are measured on the basis of the existence of formal institutions or rules and procedures, while evaluations of their effectiveness are generally missing.

It is only in 2007 that the PCCB and development partners have finally agreed to carry out a broad-based nation-wide governance and anti-corruption survey with technical support from WBI.

### Content and priorities

Both NACSAP I and II put special emphasis on corruption prevention, awareness raising and institution building, although enforcement is also captured. NACSAP I was inspired by the standard concept of WBI at the time which was based on a holistic and systemic approach to combating corruption, a model which over time has been critically reviewed by the same WBI (Haarhuis and Leeuw, 2004). Acknowledging that corruption occurs everywhere and that no single institution, such as the PCCB, could carry out the fight against corruption alone, all MDAs were instructed to develop their own action plans. No piloting or sequencing in specific MDAs took place in a government whose weak capacities were already stretched by other complex reforms.<sup>314</sup>

The original idea was for NACSAP to complement the other governance reforms with a particular anti-corruption component, and orient the MDAs to focus on those areas in their institutions that were most prone to corruption. Seven “priority” areas were selected for the national anti-corruption framework document i) rule of law and legal framework, ii) financial discipline and management, iii) procurement, iv) public education and awareness, v) public service reform, vi) whistle-blower protection, and vii) media (NACSAP, 1999). However, these largely corresponded to the ongoing broad governance reforms in the legal sector, financial sector and civil service, and thus hardly represented a strategic selection of specific components, sectors or issues. Furthermore, they did not address corruption in such other well-known, corruption-rife areas as the financing of politics, revenue collection<sup>315</sup> and the land administration.

Currently, the main difference between NACSAP I and II seems to consist in the even broader scope of the latter, which includes i) all local government authorities (LGAs) across the country as well as ii) non-state actors, in particular civil society and the private sector.<sup>316</sup> The replacement of MDA anti-corruption focal points by Integrity Committees consisting of four mid- to high-level officials is hoped to foster agency-level implementation of action plans, although Permanent Secretaries do not seem to have prioritised NACSAP in their institutions.

## 2.3 Provisions for implementation

### Roles and responsibilities

NACSAP could be described as a largely self-executing undertaking with each agency being responsible for the implementation of its specific action plan. All agencies are required to report to the President, via the GGCU and the Chief Secretary, on progress made through quarterly self-

<sup>314</sup> The international consultants who conducted the mid-term programme review of the Public Service Reform Programme in 2005 observed that in the developing world only Malaysia, to their knowledge, had ever undertaken simultaneously such a daunting, comprehensive programme of public sector reforms.

<sup>315</sup> Systematic erosion of the tax base has taken place since the late 1990s through the adoption of many tax exemptions in each budget in order to benefit patronage and clientelistic networks (interviews June 2007).

<sup>316</sup> The CSO part of NACSAP II is limited to an effort led by FORDIA to create an Action Plan like the ones prepared by the MDAs and the LGAs.

assessment reports. The GGCU in the President's Office was given the role of coordinating and monitoring implementation of NACSAP through a strategic reporting system. However, its role is limited to collecting and publishing the self-assessments as it does not have the stature or "teeth" required to demand compliance with the quarterly reporting obligation, let alone to request fulfilment of the self-selected commitments of public agencies.<sup>317</sup> The capacity of the GGCU to perform its functions has been constrained by two important factors: on the one hand, the limited staffing of only 3 to 4 professionals, and on the other, a limited vision and the lack of a proactive attitude with regard to its coordination role.

Since the new NACSAP is rolling out the action plans to local authorities, civil society and the private sector, a new array of institutions will be added to the implementing actors. The government has acknowledged the weaknesses in the monitoring and follow-up of NACSAP and has decided to step up the capacity of the GGCU and convert it into a government department. Further, it has considered creating a National Anti-corruption Forum to provide a space for policy dialogue between actors from the public and private sectors, civil society and the donor community. It remains questionable, though, whether this is another attempt to placate development partners and, more importantly, if it will bring about change in the vision about how to manage, coordinate and monitor strategically the implementation of NACSAP.

### Monitoring and communication

As indicated above, the monitoring of NACSAP implementation is carried out on the basis of a strategic reporting system. Its nucleus consists of one-page reports with information about i) the number of corruption complaints registered, ii) action taken, iii) self-assessment on performance against targets set out in the beginning of the quarter, and iv) five targets to be achieved in the following quarter. These reports are summarised by the GGCU and data is compiled in Quarterly Monitoring Reports (UNDP, 2003).

Despite the considerable efforts invested in designing the system, compliance has been at best mediocre and mainly focuses on complaints of corruption cases and action taken upon them, if at all. Reporting on progress against targeted changes in management systems, practices and procedures is almost non-existent. And a major weakness is that external opinions or assessments, for example from citizens/clients, are not sought. Although the quarterly monitoring reports are published, there has not been proactive dissemination.<sup>318</sup> The PCCB's work is mostly known to the public as a result of its own communication and awareness strategy (not specific to NACSAP). More recently, the Auditor General's office has put emphasis on producing user-friendly and timelier reports that are widely disseminated<sup>319</sup>.

### Resources

Implementation of NACSAP I was financed partly by funds from the government's budget and partly by a UNDP-managed project to support initial implementation.<sup>320</sup> In particular,

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<sup>317</sup> For information on quarterly reports filed see [www.repoa.or.tz/tgn/tgn.php](http://www.repoa.or.tz/tgn/tgn.php)

<sup>318</sup> The UNDP evaluation of the first NACSAP support project showed that during the second term of President Mkapa there was a significant decline in his public pronouncements about the government's commitment to fight corruption.

<sup>319</sup> The audit reports had never discussed in parliament, but there has been some progress in 2007, as the CAG offered a public forum on the most recent audit report of the government budget. As far as sanctions are concerned, however, there is little to show for.

<sup>320</sup> The basket-fund project spent around USD 800,000 on included studies, consultants, support for setting up GGCU, and support to PCCB, civil society and MDAs for implementing NACSAP.

implementation of the MDA-level action plans was financed through the government budget,<sup>321</sup> and during the second term of the Mkapa government, resources to some of the anti-corruption organisations, in particular the PCCB, were considerably increased. Nevertheless, it needs to be noted that a number of MDAs explicitly defined both the envisioned activities and the funds they required for implementation, while other MDAs only indicated the envisioned activities without estimating and budgeting for the costs. More recently, the World Bank has approved a credit of USD 40 million for the so-called Accountability, Transparency and Integrity Project (ATIP), which is framed by NACSAP but will support specific components of the other governance reforms (the financial and legal sectors mostly).

According to government sources, NACSAP II will be mainly government-financed through budget support but is still in the costing and negotiation phase with development partners. Each MDA was asked to make an estimate of its action plans for 2006-2010, which at the national level together accrue to the considerable amount of around USD 93 million for 5 years. It should be remembered, though, that these are fairly arbitrary as they are costed wish lists and only activities with funds attached will be implemented. NACSAP I, whose original budget was reduced by 75%, gives a good example and still remained highly unrealistic.

## 2.4 Support of development partners for NACSAP design

As an expression of confidence in the new government of President Mkapa, development partners offered both financial and technical assistance for an ambitious good governance programme as well as specific anti-corruption work. Explicit anti-corruption work was initially supported through the financing of the Warioba Report, the provision of punctual technical assistance through experts to advise on the development of NACSAP and the organisation of workshops for the development of the latter. Respecting the leitmotiv to support and strengthen local ownership, consultants were brought in to advise on the process and format of an anti-corruption strategy rather than the approach and substance of NACSAP. However, at the time of NACSAP's development, the international anti-corruption movement had just started to develop the concept of National Integrity Systems on the basis of which it was recommended that countries develop broad-based holistic anti-corruption strategies. There is no doubt that this thinking had an influence on NACSAP I.<sup>322</sup>

The donor community in Tanzania, which created a regularly meeting Governance Working Group, has partly coordinated its anti-corruption support around NACSAP mainly through the UNDP project, while others have privileged strategic investment in other governance reforms based on the belief that these will eventually have a greater bearing on the reduction of corruption (interviews with DPs). Diplomatic leverage has been used to agree on certain benchmarks, such as amendments of laws, the restructuring or creation of institutions and the roll-out of NACSAP to LGAs.<sup>323</sup>

Although no systematic and regular corruption assessments were commissioned by the development partners, they did commission a series of highly relevant reports which provide sharp analysis and recommendations for further action on issues of accountability and transparency. Development

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<sup>321</sup> Initial unrealistic cost estimates of USD 90 million were corrected down to a still high figure (UNDP, 2003). The government allocated around USD 500,000 a year from its own budget to finance MDA NACSAP plans.

<sup>322</sup> Notably, the now director of PCCB, who is given credit as one of the driving forces of NACSAP development, had attended international anti-corruption forums such as the IACC as well as WBI anti-corruption training courses.

<sup>323</sup> Examples of laws greatly influenced by the international community are the finance and procurement acts (2001 and 2004), as well as the revision of the anti-corruption law (2007) and the creation of a financial intelligence unit.

partners also nominated an anti-corruption focal point within the Governance Working Group to help coordinate and facilitate the DPs' approach in this area. Initially, this task was assumed by a governance advisor of the Norwegian Embassy and recently shifted to the governance advisor of UNDP.

## 3 Analysis

### 3.1 Contextual factors that favoured or impeded anti-corruption policy-making

(+) Extent of corruption surpassed tolerance levels and required political response:

In a country that had been relatively free of corruption until the early 1980s, this situation drastically deteriorated to reach unprecedented levels in the 1990s. At the first multi-party elections in 1995, popular discontent with the government was soaring, the international community needed to be assured that aid would be well spent, and part of the political establishment was appalled at the withering ethical standards of its leadership.

(+) Development aid requires a strong commitment to good governance:

Tanzania's dependence on aid as well as its participation in the international debt relief programme (HIPC) opened an avenue for development partners to agree with the government on an (overly?) ambitious but fragmented agenda of reforms, including anti-corruption measures.

(+) International treaties help to further anti-corruption legislation:

Tanzania's ratification of several international anti-corruption treaties, including the UN Convention against Corruption, was among the justifications used by the PCCB to review and amend the anti-corruption law in 2007.

(-) Lack of political accountability deflates sustained political will:

In the context of a de facto one-party regime, weak external accountability structures and purely government-controlled anti-corruption agencies, the political will to embark on and sustain anti-corruption reform has quickly withered away during the Mkapa regime. A similar fate is possible for the current government.

(-) Insufficient focus on knowledge and information dissemination about corruption hampers the design of appropriate solutions:

The absence of regular assessments of types, levels, manifestations and trends of corrupt practices in Tanzania has seriously impeded the design of appropriate anti-corruption measures, as well as a strategic sequencing of them. On the other hand, existing knowledge about the main flaws and weaknesses in the country's governance system do not seem to be taken into account for a strategic

anti-corruption approach.<sup>324</sup> Recent reports on governance and corruption in several key sectors of the country's economy do, however, have the potential to start reversing this situation.

## 3.2 Main drivers of change

### Anti-corruption efforts as a calculated political survival strategy

Governmental anti-corruption efforts in Tanzania seem to be the result of a rational calculation by the ruling party with regard to expected “returns”. In other words, anti-corruption initiatives are seemingly part of a political survival strategy of the one-party state pursuing two main objectives: one is outward-looking and geared to maintaining the trust of the international community to ensure continued aid and foreign investment flows, while the other is inward-looking aimed at securing political legitimacy.

The outward-looking objective is pursued by introducing formal structural or procedural changes intended to strengthen the country's integrity system so as to comply with requirements put forward by development partners. However, many of these measures have serious flaws, suggesting that there is a hidden intention for them not to function. The implementation of the Code of Ethics and official handling of the asset declaration regulations is one such example as it lacks transparency and seems to be in its present form a useless, resource-consuming exercise. The PCCB is another example since it is still not allowed to prosecute on its own initiative and bring cases of alleged corruption before the courts. Last but not least, NACSAP itself as an ambitious anti-corruption approach does not have any serious mechanism for monitoring compliance and much less for holding implementing agencies accountable for results.

The inward-looking objective is pursued through complementary approaches. These include an attempt to curb service delivery corruption and to increase the presence of the PCCB in order to channel complaints and deal with the people's grievances. The former is said to have improved public perceptions (see section 1.2), while the latter has helped the government to show to the public that it is doing something to address corruption, albeit mainly at the petty corruption level.

It is worth noting that two anti-corruption agencies, the National Audit Office and the PCCB, under the leadership of well-reputed public executives, have more recently been able to achieve a partial reversal of sceptical public opinion, mainly by being more accessible to the people and providing both information and complaints channels.

### Benevolence and arm-twisting of development partners

Development partners (also see section 3.4), who are widely perceived to be setting the agenda for the country's development process, can exert great pressure to encourage institutional or legal anti-corruption reform but they have been rather (probably too) benevolent towards the government. Thus, the government has been recently pressured by a few DPs with the financial carrot-stick to comply with its promise to review the anti-corruption law and to establish a financial intelligence unit. On the other hand, the majority and in particular the “heavyweights” have continued to applaud the government's alleged commitment and progress on anti-corruption reform.<sup>325</sup>

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<sup>324</sup> Political corruption has not been an issue as yet, nor has party financing, and efforts to help strengthen external accountability structures are of a rather recent nature.

<sup>325</sup> A striking example can be found in a newspaper article where, following a series of massive corruption schemes, the IMF is quoted that “the Fund was satisfied that the Tanzanian authorities were undertaking appropriate actions and commitments to improve governance and transparency” (This Day, 29 June 2007). On

### Independent media bite increasingly, but does it hurt?

An increasingly vocal and hope-instilling actor is the independent media, which have published major high-level corruption cases. However, it is not clear if this has lasting impact or can bring about reform in a context where power is tightly controlled and with no noteworthy opposition or countervailing forces able effectively to capitalise politically on the information.

### A fight without generals – lack of leadership

Forces and institutions opposing change are strong, well-placed and numerous. First and foremost, there is no committed high-level leadership in the government and party ranks willing to make the fight against corruption their flagship objective. Perhaps more discouraging is the fact that even if there were such leadership, the general environment of political vested interests, a culture of mutual protection and overriding fears for job security might quickly neutralise such efforts. Some analysts attribute the relatively quick deflation of President Mkapa's anti-corruption stance to a combination of these factors and Mkapa is alleged to have participated in illicit wealth creation himself.

### Ruling party CCM resists and restricts transparency and accountability

The government and ruling party consistently indicate a lack of interest in promoting transparency and accountability. A recent effort to tighten the media law was only barely fended off while the NGO law contains the scope for imposing strict government control of NGOs. Further, the Mkapa government tried to ban a well-reputed critical advocacy NGO for the publication of corruption-related television clips,<sup>326</sup> the ruling party disciplined party members in recent budget discussions, and critical media have been accused by the Minister of Finance of being unpatriotic. Also, the government has not taken action upon the findings of the Auditor General's annual reports, and parliament failed to conduct hearings on them.

### Corrupt practices are good sanction-free business

The concentration of resource flows around the state, and in particular in the circuits that link government, business and donors, provides strong incentives to engage in corrupt practices. It is still easier to make big money through politics and corruption than by being a private sector entrepreneur (Kelsall and Mmuya, 2005). Conveniently, flagrant impunity does nothing to help to break through this pattern.

### Drivers point mainly towards negative change

Against this context, some critical voices have said that it may be more difficult to identify drivers of positive change than the more visible drivers for negative change. This is a rather bleak situation but needs to be taken into account for the design for future anti-corruption policies, in particular since relations of power and accountability systems have so far not come under scrutiny, nor has behavioural change been targeted seriously.

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the other hand, the IMF has also become increasingly critical behind the scenes, e.g. regarding the alleged disorderly conduct at the Bank of Tanzania and TANESCO subsidies.

<sup>326</sup> The Mkapa government tried to silence the professional and vocal NGO Haki Elimu by prohibiting it from publishing television clips about corrupt practices in the education sector. Ironically, the scenes were designed on the basis of official, publicly available government information. With the current government relations were normalised.

### 3.3 Rational and political underpinning for NACSAP

Interestingly, anti-corruption initiatives to date have largely ignored the main recommendations of the illuminating and frank Warioba Report. Instead of “cleansing the country’s leadership from the top”, efforts have focused mainly on the investigation of an increasing number of “small fish” as well as the simplification of processes to control lower-level administrative corruption.

The design of NACSAP was influenced by good practice recommendations of the time, in particular the advice of WBI to counter an omnipresent problem with a standard model based on a comprehensive strategy. However, the complementary principle of strategic sequencing in line with the country’s capacities and specific problems has been totally neglected. As a result, NACSAP ended up being a hugely ambitious undertaking with no strategic focus that became unmanageable (some have dubbed it a “monster”). Against the analysis of the above-mentioned drivers of change, one could even venture the hypothesis that there are some hidden intentions to dilute efforts, in particular since some public agencies had advocated in favour of piloting and sequencing certain measures in order to concentrate resources and gradually build on experience.

With hindsight, it becomes clear that in a country characterised by the domination of one party for decades, the approach of starting with public institutions and including non-state institutions at a later stage was a significant design flaw of NACSAP I. In an “imperial” presidency (Shivji, 1991) with little external control or accountability, reliance on self-assessment, self-criticism and self-cure by the party in power cannot be expected to put a break on the corruption spiral.

Altogether, NACSAP is perceived by many as a relatively fruitless exercise and since some of the key problems of the first phase have not been adequately addressed, there is concern that the second phase may suffer the same fate. A number of interviewed political analysts and development partners felt that a reduction of corruption may depend rather on the successful implementation of the four core reform programmes of the public sector and some additional measures to enhance public oversight and control.

Altogether, anti-corruption efforts in Tanzania have so far turned a blind eye to corrupt practices that reinforce the dynamics of an aid-dependent one-party state endowed with considerable natural resources, including state capture, party financing, vote-buying, and nepotism. According to a group of parliamentarians “corruption in Tanzania today is invisible. It is difficult to get direct evidence and corruption is now entrenched in the system or institutional setup”.<sup>327</sup> Nevertheless, a series of investigative reports of the media have shown that grand corruption can sometimes be spotted and exposed. The real problem lies in the fact that there is no apparent will to address grand corruption, which is doing more damage to the economy and national development than petty corruption.

### 3.4 Role of development partners

Given the sheer size of development aid in Tanzania’s budget, the fiduciary accountability that goes hand-in-hand with the provision of general budgetary support, and the profile the media give to development partners, it comes as no surprise that the latter are perceived as the driving force behind good governance reform, including anti-corruption initiatives. While DPs have pursued a conceptually well thought through web of mutually reinforcing reforms, when analysing the approaches chosen and actions taken by them, with hindsight a rather ambivalent picture emerges revealing certain contradictions and dilemmas.

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<sup>327</sup> Interview with the eleven-member Executive Committee of African Parliamentarian Network Against Corruption (APNAC), Dodoma, Tanzania, 17 June 2004 (UNDP, 2004).

Perhaps the most puzzling issue is that DPs attached great importance to specific anti-corruption work during the first Mkapa government and provided important strategic support, but they seem to have put progressively less emphasis on issues relating to corruption during his second term (ARD/USAID, 2003; Sundet, 2004).<sup>328</sup> This may be due to the belief that the core governance reforms will be more effective than NACSAP, although if this was the case it is still surprising to find that an anti-corruption dimension is not mainstreamed more clearly in the design and monitoring of these reforms. DPs' greater complacency with corruption in Tanzania may also be explained by concerns not to antagonise the Government in the quest to keep the ambitious reform packages on track. However, if this was the case the approach has started to backfire as recent evidence has revealed that systemic corruption undermines the progress of important parts of these very reforms.<sup>329</sup> Finally, it could also be the result of a lack of capacity to deal with a politicised issue in a constructive manner, an aspect brought forward as a partial explanation by many interviewed development partners.<sup>330</sup>

A second important aspect is the drastically changed relationship between DPs and the government as a result of General Budget Support. While the significant increase in coordination and predictability is viewed as positive, some critical issues remain. Few donors surveyed for a USAID study saw corruption as a prohibitive factor in providing budget support.<sup>331</sup> Some rather saw budget support as offering a chance to strengthen institutional weaknesses, identify financial leakages, and enter into a dialogue with the government to stop them. However, DPs do not seem to have organised themselves to capitalise on their position as "partner" and to negotiate more meaningful anti-corruption commitments,<sup>332</sup> nor do they seem to use their political leverage to hold the government accountable for its agreement.<sup>333</sup> Solutions to the latter problem are not easy or straightforward and conditionalities have their problems too, but DPs have been criticised for being too close to government.<sup>334</sup>

A third dilemma is the focus on technocratic solutions to a largely political problem, with efforts concentrating on economic governance. Although DPs are aware of and have thoroughly studied the serious accountability, transparency and integrity problems of Tanzania's political governance system, there has been little follow-up in practice. Some of the crucial issues of political corruption have not been touched upon as yet. Others have not been prioritised sufficiently, like support for the demand side of anti-corruption through strengthening the Parliament, and empowering local citizens to provide oversight of the budget process, although these areas have received more support

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<sup>328</sup> The majority of interviewees (political analysts and development partner staff) pointed in this direction.

<sup>329</sup> See the Traffic International report on forestry and the report on corruption in the wildlife sector mentioned earlier.

<sup>330</sup> Development partners were criticised for shifting the focus of a national anti-corruption approach from a societal problem to one of economic governance, excluding its political and societal nature (interview with Judge Warioba).

<sup>331</sup> "General Budget Support in Tanzania: A snapshot of its effectiveness", Brian Frantz (2004) [www.sarpn.org.za/documents/d0001036/P1149](http://www.sarpn.org.za/documents/d0001036/P1149); [www.u4.no/helpdesk/helpdesk/queries/query52](http://www.u4.no/helpdesk/helpdesk/queries/query52)

<sup>332</sup> One of the key anti-corruption benchmarks of a recent Performance Assessment Framework (which is the base agreement for GBS) was the "submission of a reviewed anti-corruption law", instead of selecting an indicator that would reflect the effectiveness of some key anti-corruption effort such as systematic and rigorous follow-up on Auditor General reports, including disciplinary or criminal measures against those responsible.

<sup>333</sup> Upon non-compliance with the commitment of the government to submit the anti-corruption law for review to parliament, only Denmark reacted in a controversial and rather symbolic way, by freezing around 10% of its GBS.

<sup>334</sup> "MPs remain ambivalent with respect to donor agencies. All MPs find them much too influential, ....". Moreover, some MPs claim that there is a "conspiracy between the donors and the government" (OPM et al., 2005).

recently. The local government reform is also largely designed as a technocratic reform while civil monitoring from below, such as a “follow the money” approach, has not been considered yet.

Last but not least, it is not quite understandable why development partners have not pursued a more creative approach to producing much-needed regular “hard” evidence on corruption, its patterns, trends and the effects of countering measures. Even if the government does not want to pursue such an initiative, as happened towards the end of President Mkapa’s first term, independent research institutions could be tasked with producing yearly or bi-annual surveys / reports, as happens in other countries.

### 3.5 Interplay with related governance reforms and associated actors

Conceptually, the approach of complementing the four key governance reforms (see section 1.1) with a series of cross-cutting interventions to combat corruption is laudable. In practice, however, this approach has suffered significant shortcomings.

First of all, it is widely believed that the core reforms, by reforming systems, simplifying processes, etc., will bring about more transparency and openness and hence a reduction in corruption. However, the fulfilment of this prophecy is rather doubtful for the following reasons:

1. despite all efforts, the reform agenda is still too fragmented and inward-looking and “steakholders”<sup>335</sup> ensure that each reform treads as little as possible on vested interests;
2. little is known about the specific forms and manifestations of corruption affecting the areas addressed through these reforms;
3. key types of corrupt practice and actor involved are neither spelled out nor explicitly analysed in order to introduce specific safeguards or counter-measures,<sup>336</sup>
4. assessing the impact of these reforms falls short of evaluating transparency and accountability in practice (measurements still focus largely on institutions and rules in place, not their effectiveness), making it difficult to claim victory at any given point of time.

On the other hand, NACSAP has not established itself as an instrument for facilitating, providing guidance or monitoring specific and strategic anti-corruption dimensions that could be addressed explicitly through the core governance reforms, thus missing important opportunities for potential impact. Further, there has been a generalised lack of awareness and vision about the need and potential to mainstream anti-corruption reform into broader governance and sector reform, both on the part of the government and, surprisingly, on the part of development partners also. Valuable change has started to occur through recent reports with a focus on analysing specific governance issues, including corruption, of particular sectors, which provide a basis for sector anti-corruption initiatives.

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<sup>335</sup> The term “steakholder” is used as a joke-word for “stakeholder” as everybody tries to defend his/her own interest and does not want to give up any piece of “meat”.

<sup>336</sup> In the words of the GGCU Coordinator, “it is difficult to effect change if the real issues are not talked about openly”.

### 3.6 Factors that facilitate or hinder implementation

Implementation of NACSAP as a whole is fraught with difficulties stemming both from the political and institutional environment as well as from the implementation design.

#### Lack of regular and systemic information and dissemination

The lack of regular and systematic information about trends in corrupt practices has a doubly negative impact: it does not allow the assessment of progress or appropriate corrective measures; and it deprives external actors (be it civil society, parliament, media or the DPs themselves) of powerful advocacy instruments for holding the government accountable. On the other hand, the NACSAP monitoring system has produced largely meaningless data. The information produced is not known to be used by senior management, e.g. the Chief Secretary and his political superiors, the Prime Minister or the President, to hold executives of the MDAs to account for their results.<sup>337</sup>

#### Official dialogue is not open to non-state actors

Dialogue content between the government and development partners about reform objectives and associated indicators is not widely known. In addition, participation in policy monitoring tends to be controlled by the government to avoid “unpatriotic” or “subversive” organisations from speaking up.<sup>338</sup> Some of the development partner interviewees exercised some self-criticism by agreeing that for not too obvious reasons the development community had accepted or tolerated the fact that civil society was to a large extent excluded from policy monitoring.

#### No accountability put into practice

Public managers or elected officials such as ministers are held accountable by virtually nobody for results achieved or not achieved under NACSAP. This expression of the lack of oversight and political will is traceable to the time of the Warioba Report. The key recommendation to hold public managers responsible for results and if needed remove them from office has not been taken up, nor has any other publicly known mechanism for performance assessment under NACSAP been established. Also, parliamentary oversight of government anti-corruption efforts is entirely missing.<sup>339</sup> There is no incentive system, positive or negative, attached to anti-corruption work that might act as a major disincentive to implementing unpopular reform despite available evidence for either administrative or criminal procedures.<sup>340</sup> At the same time, little attention has been paid to creating positive incentives for public managers to engage in the implementation of measures and instruments that would curtail powerful vested interests.

<sup>337</sup> One must note that the GGCU has no mandate to hold any public servant accountable. It has exclusively a coordinating and information dissemination role.

<sup>338</sup> The impact of independent self-nominated participation in the Public Expenditure Review in 2001 was such that from then onward civil society organisations were selectively invited (Interview with key interviewee).

<sup>339</sup> None of the key institutions that are supposed to drive the national anti-corruption agenda, such as the GGCU, PCCB and Ethics Secretariat, are obliged to report to Parliament, rather they are all placed under the President’s Office.

<sup>340</sup> For example, Permanent Secretaries are usually not held accountable for unsatisfactory national audit reports. Mid- to high-level public officials are, at the most, moved to another position. Also, high-level cases of alleged corruption investigated by the PCCB frequently do not reach prosecution due to the DPP’s blocking of such efforts.

### A wealth of organisations do not bundle their efforts

The nebulous relationship between NACSAP and the strategic governance and integrity institutions, such as the Ethics Secretariat, the PCCB, Commission on Human Rights and Good Governance, parliament, the judiciary and the coordinating GGCU, poses a big challenge for coherent anti-corruption work. There is no evidence of any structured working relationships between NACSAP and these institutions. Rather, it was admitted that “there are fights for turf as in any bureaucracy”.<sup>341</sup>

### Non-state actors do not have enough voice

Despite some positive developments, both media and civil society organisations face possible threats or retaliation for criticising the government, advocating for change or contributing to holding it accountable. This is largely due to the restrictive legal environment but probably more so to the “soft” control exercised through menacing telephone calls from the office of senior officials, through buying off critical voices and even entire newspaper companies, and through the looming threat of closing business opportunities with the government.

### Cultural values and attitudes

Cultural values, norms and habits make Tanzanians reluctant to criticise or protest openly against political power; this explains in part the low level of willingness to take action against corruption.<sup>342</sup> The concept of “ndetabu”, for example, means that people want to avoid trouble and would rather conform to improper behaviour than challenge it. The concept of “kulindana” refers to the duty to look after and protect each other. In the public service this assumes a strong element of patronage and makes internal whistle-blowing unlikely. Finally, Tanzanians do not tend to demand their rights and as a nation would not want to antagonise the donor community, which is valued for its support. Hence, society stays quiet.<sup>343</sup>

In addition, the economic reform of the mid-eighties and early nineties has led to a dramatic change of values, principles and ideals. Now, quick money-making and eager striving for material wealth has become the flavour of the day, while concern for the public interest and the achievement of societal goals has mainly disappeared.

### Little islands of leadership with discrete support from the top

Last but not least and in order to finish this section on a positive note, there are signs that some public leadership with the determination to do things differently is emerging. This is the case in particular in the National Accounting Office and the PCCB. These institutions have managed gradually to increase their credibility vis-à-vis the national population. The sustained increase in funding provided to the institutions as well as the President’s recent nomination of new competent and respected executives have been important steps into the right direction. This is a development that needs to be understood and further supported.

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<sup>341</sup> Interview with key interviewee.

<sup>342</sup> 69.7% of the people interviewed for the State of Corruption Report 2002 said it would not take action against corrupt practices. Reasons were however not only of cultural nature but of fear for reprisals or lack of evidence.

<sup>343</sup> Interviews with several key interviewees.

## 4 Lessons learned

The art of managing the aid-dependent neopatrimonial seems to have been mastered; this impedes real change

In a context of strong patron-client relationships like Tanzania the formal rules, well known by the political and administrative elite, are applied selectively while informal rules relating to political and social loyalties and mutual obligations continue to set the tone for the final courses of action. Good governance and anti-corruption reforms are largely perceived as donor “conditions”, whereas the real interest of the government lies in staying in power and maintaining the status quo. Maintaining donor confidence and support is part of the political calculation while substantive reforms that would genuinely reduce corruption are not translated into practice. This is certainly not a new dynamic but it needs to be better appreciated and donors ought to assume their fiduciary responsibilities more diligently. It also needs to be better understood in order to design approaches where corruption is appreciated as an integral part of the system, not just an aberration.

Fish rots from the top but the head is not cut off

Since the Warioba Report was published in 1996, its most important recommendation – to clean government leadership from the top – has never been implemented. Permanent secretaries, for example, are not sanctioned when the Auditor General discovers large amounts of unaccounted-for public funds.<sup>344</sup> Or, corrupt practice in the campaigns to select a CCM party candidate for presidential elections were ignored by the party leadership as a criterion for excluding candidates from running because signs of this behaviour had been found in all campaigns.<sup>345</sup> Without holding mid- to high-level officials accountable for either their involvement in corrupt practices or their inability to achieve results in preventing corruption, it is impossible for change to take root.

The elusive quest for self-reform in a corrupt one-party state system

Leaving a one-party system to reform itself has failed in a context where the natural instinct of the ruling party is to stay in power in perpetuity and where predator elites see the state administration as a resource for wealth extraction rather than an instrument to serve the public interest. Most anti-corruption reform efforts have focused on initiatives to reform the supply side of government and to strengthen public watchdog institutions, but these all depend more or less directly on the President. Support to external accountability institutions has been provided for some time, but recently more emphasis has been given to them. The impact of more intensive work with Parliament, civil society and the media cannot be expected to develop overnight, though, and there are inherent risks that those efforts may be considered as “external meddling with national affairs”. It must not be forgotten that the Tanzanian public still has trust in its political leadership and rather less in foreigners.

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<sup>344</sup> There are now consequences from adverse audits for LGAs, though, as these disqualify them from receiving the LG Capital Development Grant. As soon as this was implemented, the number of adverse audits dropped.

<sup>345</sup> Interestingly, and as if to underline the practice, on 31 July 2007 the National Executive Committee of the CCM completed the selection of the party’s nominees who will run for the party’s district, regional and national leadership positions. Where issues of corruption were raised against a candidate, these allegations were dismissed as “majungu” or “fitna” (lies) and candidates allegedly involved in corruption still got nominated.

### Good governance reforms more effective than non-strategic anti-corruption strategy?

It has been claimed that the package of good governance reforms in Tanzania brings about more change in controlling corruption than the non-strategic NACSAP and that the latter serves the purpose of “keeping the development partners happy”. However, it is important not to succumb to simplistic conclusions. The good governance reforms lack a specific anti-corruption dimension and their effect on corrupt practices is not evaluated systematically, making it difficult to take corrective action where needed and much less to claim victories – even small ones – with certainty. Probably the bigger problem is that there does not seem to be a strategic vision about how to achieve better accountability and increased transparency in practice, in order to foster good management of public affairs but also as an antidote against corrupt practices. This is particularly true for the DP side as the government does not have much interest in such an approach. Against the political background of Tanzania, new forms must be found to open up the political and administrative systems through local actors and bottom-up monitoring. It is highly questionable that the new version of NACSAP will have a positive impact on this; rather, it is feared that it will turn into an unmanageable dead duck.

### Excessive focus on technocratic solutions for political problem

The excellent analytical work on the political system of Tanzania produced by academia and the members of the Good Governance Group has consistently showed since 2000 that in particular the political transition of the country is incomplete. Serious deficiencies in the governance and accountability system persist whose solutions require inherently political solutions. Nevertheless, NACSAP and the other core reforms focus on technical issues of the state administration without affecting the relations of power. Solutions to this dilemma have to come, without doubt, from within the country and the challenge lies in finding ways to support drivers of change outside of the government and the ruling party.

### Lack of information and participation reduces already weak external oversight

In a country with weak political competition, the lack of solid information for advocacy and of formal spaces for the participation of non-state actors in monitoring limits the structurally weak external oversight. The production of regular systematic assessments of the levels, patterns and trends of corrupt practices, the conduct of vulnerability assessments in specific sectors and the wide dissemination of such information is a precondition for the public, civil society organisations and parliament to engage in collective action. The promotion of openness and transparency in the dialogue between development partners and the government is needed to break through the inertia of party dominance. And those actors who are willing to challenge the political establishment need to be shielded against interventions. The recent example of Haki Elimu being “rescued” from a government crackdown is a case in point.<sup>346</sup> Finally, bottom-up monitoring of government action, in particular at the local level, needs a much bigger boost.

### Development partners praise formal reforms but under the surface corruption flourishes

As indicated throughout the document, development partners have been relatively benevolent in assessing Tanzania’s performance in controlling corruption. The country has been able to maintain the image of a well-performing, reform-oriented, low-income country, and development partners have been happy to acknowledge formal reforms in the legal and institutional realm. Nevertheless, under the surface corruption continues to flourish as these reforms do not translate into changes of

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<sup>346</sup> See the explanation of the case in section 3.2. *Ruling party CCM resists and restricts transparency and accountability.*

practice. The absence of “hard” evidence in the form of regular and systematic corruption assessments favours this state of affairs. While it needs to be recognised that formal reforms are often a necessary condition for change, they are far from sufficient. For example, the effect of the recently amended anti-corruption law is questionable as long as no “big fish” are investigated and, where evidence indicates, prosecuted, judged and, if found guilty, sentenced and punished.

#### General Budget Support a blessing and a scourge?

The shift towards General Budget Support, which is broadly considered a blessing for better government-donor partnership as well as local ownership of development processes, may be a scourge for anti-corruption work. The ensuing profound dilemma may not be easy but also not impossible to resolve. Development partners have tried to improve the dialogue with the government, and as a result they are seen as better partners by the government while outside actors lament that DPs seem to have lost their ability to criticise the government constructively. There seems to be a lack of rigour when assessing the real impact of governance and anti-corruption reforms and it would be important to review the way specific anti-corruption indicators can be introduced into the Performance Assessment Framework (PAF) and how information on them can be gathered. The PAF may also need serious rethinking when it comes to making it transparent and easily accessible to outside actors and to having a system which would allow the money trails to be easily followed from the budget to where the funds are received and spent. Development partners need to capitalise more on their role as a partner in this area and exert their leverage creatively.

#### Lack of adequate staffing within donor community

Development partners lack adequate human resources on the ground in order to provide meaningful support and orientation to the anti-corruption work in the country. Thus, the Good Governance Working Group collectively has not had a senior expert with broad anti-corruption and good governance experience alike who would have the knowledge and the technical and political expertise i) to provide strategic advice on the approach and specific issues that should be taken up by the international community in its dialogue with the government; and ii) to assist the government in identifying priorities and giving NACSAP a strategic direction. The nomination of GWG focal point is a move in the right direction, but it would seem to be useful collectively to develop clear terms of reference for an anti-corruption “mainstreaming” expert, similar to what is done in the field of gender work. In addition, much more emphasis needs to be placed on systematically dealing with governance across all areas, making it a key work element and familiarize all sector staff with this. The governance working group should be given more weight in the Development Partner Group’s internal discussions as well as in the design of negotiating platforms in all areas.

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Anti-corruption policy making in practice:

## Zambia – A Country Case Study

Karen Hussmann and Davies Chikalanga

**U4 REPORT 1:2007 PART 2F**



## Contents

<b>ACKNOWLEDGEMENTS .....</b>	<b>204</b>
<b>1 COUNTRY BACKGROUND.....</b>	<b>205</b>
1.1 RECENT POLITICAL LANDMARKS AND MAIN GOVERNANCE REFORMS.....	207
1.2 SCOPE OF CORRUPTION IN ZAMBIA .....	208
1.3 HISTORY OF ANTI-CORRUPTION INITIATIVES AND INSTITUTIONAL FRAMEWORK .....	209
1.4 MAIN PLAYERS.....	211
<b>2 THE FACTS OF ANTI-CORRUPTION POLICY MAKING .....</b>	<b>214</b>
2.1 ORIGIN AND RATIONALE OF MAJOR ANTI-CORRUPTION INITIATIVES (2000-2006).....	214
2.2 DESIGN OF EXPLICIT ANTI-CORRUPTION INITIATIVES .....	214
2.3 PROVISIONS FOR IMPLEMENTATION .....	218
2.4 SUPPORT OF DEVELOPMENT PARTNERS TO MAJOR ANTI-CORRUPTION INITIATIVES .....	219
<b>3 ANALYSIS.....</b>	<b>220</b>
3.1 CONTEXTUAL FACTORS THAT FAVOURED OR IMPEDED ANTI-CORRUPTION POLICY MAKING .....	220
3.2 MAIN DRIVERS AND OPONENTS OF CHANGE .....	221
3.3 RATIONAL AND POLITICAL UNDERPINNING FOR THE CHOICE OF POLICY OPTION .....	223
3.4 ROLE OF DEVELOPMENT PARTNERS.....	224
3.5 INTERPLAY WITH OTHER RELATED GOVERNANCE REFORMS .....	225
3.6 FACTORS THAT FACILITATE OR HINDER IMPLEMENTATION .....	225
<b>4 LESSONS LEARNED FROM THE POLICY DESIGN .....</b>	<b>226</b>
4.1 PRELIMINARY OBSERVATIONS ON THE IMPLEMENTATION OF NACPS.....	228
<b>5 BIBLIOGRAPHY .....</b>	<b>231</b>

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This case study is part of a broader research project of the U4 Anti-corruption Resource Centre called “Anti-corruption policy making in practice – what can we learn from national strategy/policy experience?” The main objective of the project is to provide insight, based on investigations in six countries, into how and why anti-corruption policy frameworks are designed, who the driving forces are, factors that promote or impede implementation, and the role of development partners in the overall process. Its findings will contribute to the ongoing debate on how to implement Article 5 of the United Nations Convention against Corruption (UNCAC).

The country case study of Zambia focuses specifically on the National Anti-corruption Policy as an expression of the country’s nationwide anti-corruption policy framework. Other anti-corruption policies or measures are touched upon but are not at the centre of the analysis. The country case study on Zambia was produced on the basis of qualitative interviews with a broad range of key interviewees in each country and a literature review, including key policy and reform documents as well as political analysis. The authors would like to thank Lena Hasle, Goodwell Lungu, Mbinji-Tange Mufalu and Tim Steele for their insightful comments on earlier drafts of this study, in addition to all those who have generously provided their expert knowledge, political insights and time to contribute to this undertaking in Zambia. We sincerely hope that the content will be useful for further anti-corruption initiatives in Zambia as well as in other countries struggling with similar corruption challenges.

# 1 Country Background

Since independence from 70 years of British rule in 1964, Zambia's nation-building process has managed to steer the country peacefully through three major political and economic transitions to the multiparty democracy and market economy of today. The country is characterised by its relative unity and slowly improving macroeconomic performance but also by incomplete political reform with large powers vested in the executive, which affects its accountability structures and the quality of political governance (Chanda, 2004; DFID, 2004).

The first decades of independent Zambia, formerly Northern Rhodesia, were characterised by the strong leadership and increasingly autocratic rule of the “father of the nation”, Kenneth Kaunda – President from 1964 to 1990. During the *First Republic (1964-72)*, Zambia was a multiparty democracy and lived its golden era in terms of economic development.<sup>347</sup> However, when Kaunda started to develop a national ideology of African socialism called *Zambian Humanism*,<sup>348</sup> the *Second Republic (1973-1984)* was turned into a “one-party participatory democracy” with the United National Independence Party (UNIP) as the only legal party. Total government control of the economy, restrictions on civil and economic freedom, diminished democracy, economic stagnation and plummeting living standards for most were the consequences.<sup>349</sup> Under pressure from the IMF, Kaunda introduced structural adjustment programmes in 1985 which did not bring about the desired change.<sup>350</sup> A few years later, economic decay<sup>351</sup> and international pressure led to the reintroduction of multiparty politics and the establishment of the *Third Republic* in 1991.

Kaunda's efforts to put the economy back on its feet could not prevent his fall from power. In the first multiparty elections of 1991, the Movement for Multiparty Democracy (MMD), which had spearheaded the struggle for political pluralism, overwhelmingly defeated UNIP (Chanda, 2004). However, the hopes vested in the new government of Fredrick Chiluba (1991-2001) were largely betrayed. Privatisations were used to enrich allies and party members and to cement the political dominance of the MMD. Worse, it has been widely argued that corruption took root during Chiluba's 10-year government and became endemic, with the President and his allies siphoning tens of millions of dollars from the country's coffers (TI-Z, 2006; ACG, 2007).

It appears that the liberalisation of economic policy has not been accompanied by similar changes in the political governance system. Zambia is a presidential democracy with a maximum of two five-year terms for the same president, who is vested with enormous powers by the constitution. The president not only appoints most constitutional office-holders but also has the power to dismiss his appointees without giving reasons. The president also appoints all judges. Formalistic ratification mechanisms are alleged to give Parliament a rubber-stamp function and most office-holders pay allegiance directly to the president. This concentration of power is considered to influence the president's refusal to drive a constitutional review process forward or to address

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<sup>347</sup> Zambia had its highest per capita income in 1976 when it was almost double as high as today (Human Development Report, 2006). At the time, Zambia was one of the most prosperous Sub-Saharan countries (Zambia PRSP, 2004).

<sup>348</sup> *Zambian Humanism* was based on what Kaunda considered basic African values: mutual aid, trust and loyalty to the community. *Zambian Humanism*, with its aim of creating “one Zambia one nation” with a human face for development, was similar to other models of African socialism developed in parallel in Tanzania and Ghana.

<sup>349</sup> Severely affected by the oil crisis of 1973 and the collapse of the copper price, Zambia was by the mid-80s one of the most indebted countries in the world.

<sup>350</sup> Kaunda broke relations with the IMF in 1987 due to social protests over the cutting of food subsidies, but resumed agreements with the IMF in 1989 when, in the context of the fall of the Soviet Union, he was forced to announce the partial privatisation of parastatal companies.

<sup>351</sup> In 1991, the economy continued in free fall, with high unemployment, inflation at 26% and negative per capita growth rates (Human Development Report, 2006).

electoral reforms seriously, both of which pursue the purpose of breaking through the closed circle of power-holders and opening the political system to more competition (DFID, 2004; TI, 2006).

The legislature is not independent from the executive, partly because the president appoints ministers from Parliament. In addition, the ruling party is accused of luring opposition members into its own ranks, often covering these attempts as being in the interest of national unity and development. The judiciary is formally independent but in practice also influenced by executive decisions.

#### A brief look at Zambia's progress in governance

Today, Zambia is one of the poorest countries in the world with a per capita income of around USD 500 a year, a 73% poverty rate, a life expectancy rate of 37 years and a rank of 165 out of 177 countries in the Human Development Index.<sup>352</sup> Having been in the 70s one of the most prosperous countries of sub-Saharan Africa, Zambia recognises in its poverty reduction strategy of 2004 the need to facilitate economic growth through improved governance, increased transparency and accountability, the separation of powers and zero tolerance of corruption (PRSP, 2004).

While some progress has been made, in particular in the field of economic governance and the strengthening of watchdog organisations, such as the Auditor General's office, civil society and the media, significant problems persist in the field of political governance, starting at its roots in elections. The ruling and opposition parties resort systematically to corrupt practices to exert undue influence over the electorate (interviews, May 2007).<sup>353</sup>

However, the lack of functional independence for state institutions such as the Auditor General, the Anti-Corruption Commission, the Electoral Commission, the Judiciary and Parliament impedes efforts to improve accountability and integrity in an institutionalised and sustainable way.<sup>354</sup> The effectiveness of these agencies is further limited by generally weak institutional capacities. The current government has also relied on presidential leadership to induce reforms but has not yet sought commitment to change from the broader political establishment.

Finally, the government is not as committed to transparency and access to information as it publicly claims to be. An initiative by the Mwanawasa government to introduce a new broadcasting law in 2002 was approved by Parliament, only to be fought by the same government that had promoted it when it realised that too much power was to be given to the new public broadcasting agency.<sup>355</sup> The Independent Broadcasting Authority Act was meant to govern all forms of broadcasting under the aegis of a transparently recruited board of directors. When the Minister of Information tried to alter the list of appointees to the Board that had been put forward by the Appointments Committee, this

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<sup>352</sup> See [www.worldbank.org](http://www.worldbank.org) and <http://hdr.undp.org/> and Zambia PRSP (2004).

<sup>353</sup> The use of government vehicles and petrol is endemic, the purchase of voter cards and the "persuasion" of chiefs to give order to his sub-ordinates to vote for a particular candidate are widespread practices. Fundraising activities with private companies in turn for promises to receive contracts and the buying off of political opponents through offers to become minister are also common (interviews May 2007; Taylor & Simutanyi, 2007).

<sup>354</sup> For example, revelations about large scale corruption by government officials of the Chiluba regime (construction of flats, sale of mines, copper and cobalt as well as improper awards for contracts of goods and supplies) and auditor general reports bringing to light serious irregularities were not acted upon by the government at the time despite reports from the Public Accounts Committee urging the government to deal with erring officials (TI-Z, 2004). The current government does act against allegations involving public officials of the Chiluba regime but much less so when it comes to corrupt practices in its own ranks.

<sup>355</sup> Board members would no longer be appointed by the Minister of Information, nor could the latter remove the director any longer. Licensing powers would have been transferred from the Minister to the independent broadcasting authority. Further, the Minister would no longer be able to influence the content of broadcasted programmes or give any directions to the new agency.

violation of the law was rejected by the High Court.<sup>356</sup> However, upon a government appeal the Supreme Court overturned this ruling. The government has shown that it does not walk the talk, an argument that was further nurtured when the government withdrew a widely consulted Freedom of Information Act from parliamentary debate until further notice.

## 1.1 Recent political landmarks and main governance reforms

The presidential elections of 2001 were a major political landmark of the past decade. Associated events have not only led to a significant change of power but also opened the way for former President Chiluba and high-level allies to be investigated and prosecuted for large-scale looting of state resources (ACG, 2007). When former President Chiluba attempted to change the constitution in order to stand for a third term,<sup>357</sup> he caused a wave of protests. Political instability was the consequence and Chiluba finally had to abandon the objective.<sup>358</sup> His successor from the same party MMD, current President Levy Mwanawasa, needed to distance himself quickly from Chiluba. Firstly, in the eyes of the public and important parts of the MMD Mwanawasa was seen as the former president's puppet. Secondly, there were political tensions over control and power in the ruling party. When Chiluba, still president of the MMD, tried to push his aides into important government positions to uphold his corrupt networks of mutual protection, the new President stood his ground, established his own government and turned against Chiluba (interviews, May 2007).

Following intensive campaigning from opposition parties and civil society, in June 2002 Mwanawasa requested the National Assembly to lift Chiluba's immunity in order to pave the way for an investigation into his alleged involvement in large-scale corruption.<sup>359</sup> He then established an anti-corruption Task Force to investigate high-level cases, including allegations against the former President (see section 2.2). A major criticism, though, has been that the Task Force's mandate is limited to corruption cases that occurred under the Chiluba regime while current allegations are handled erratically, if at all, by different institutions. Also, many citizens are disillusioned by the lack of convictions secured of those arrested (interviews, May 2007; ACG, 2007).

These developments had been further fuelled by two contextual factors. On the one hand, allegations of large-scale corruption against former President Chiluba had been published by an independent and credible press (see section 2.1). On the other, corruption throughout the electoral process in 2001 was both so widespread and so evident that it was condemned by election observers and contributed to public frustration.

In terms of governance reforms, Zambia has been undergoing complex economic and political reform processes since its peaceful transition to multiparty democracy in 1991 (Taylor & Simutanyi, 2007). The government of Zambia has embarked upon a series of major reforms whose direct objectives can be summarised as to improve the efficiency and accountability of public institutions in order to provide better services to the people and to create an adequate environment for economic development with a view to gradually reducing poverty in the country. The government has committed to a series of broad governance reforms under the Public Sector Reform

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<sup>356</sup> See [www.osisa.org/node/8137](http://www.osisa.org/node/8137)

<sup>357</sup> In order to buy political support to change the Constitution and run for a third term, Chiluba gave out generous state presents, in particular through the sale of government houses at hugely reduced prices, sometimes for as little as 25% of their value (Zambia online news, edition 32, 23 December 1997).

<sup>358</sup> Senior party members who did not agree with Chiluba's attempt to stand for a third term were forced out of the party while others who opposed the nomination of Mwanawasa as presidential candidate voluntarily left. Some of both groups founded new political parties and filed presidential candidates on their own (Chanda, 2004).

<sup>359</sup> In May 2007 a London judge issued a landmark judgement against former President Chiluba and a series of close allies, requiring them to pay back USD 41 million to the Zambian Government. This civil case concerning the so-called "ZAMTROP account", which the Zambian Government had entrusted to the UK justice system as the account was held in a British bank, has been hailed internationally as a victory in the fight against corrupt political leaders.

Programme (PSRP). The three main pillars are the Public Service Management Component (PSM), the Public Expenditure Management and Financial Accountability Reforms (PEMFAR) – including procurement reform – and decentralisation.<sup>360</sup> Although these reforms do not have an explicit focus on corruption, they pursue as part of their stated objectives an increase in transparency and a strengthening of accountability, and thus have an indirect bearing on reducing corruption.

It must be noted that many of the reforms are still incomplete, partly due to weak institutional capacities and partly due to insufficient political will and leadership. In the realm of procurement, for example, the entire Zambia National Tender Board is still appointed by the president and transparency in handling the tenders is limited in that unsuccessful bidders are not given feedback.<sup>361</sup> Despite the procurement reforms, large sums of money also continue to be diverted to individuals through irregular procurement of goods and services, as revealed by audit reports (TI-Z, 2004).

The government also established in 2003 a Constitutional Review Commission (CRC) to address the shortcomings of prior efforts to reform the constitution of 1991. The CRC released its report and a draft constitution in the end of 2005,<sup>362</sup> but the government has been dragging its feet and is widely considered to be blocking progress (interviews, May 2007; DFID, 2004).

In August 2003 the government established an Electoral Reform Technical Committee (ERTC) in response to many years of civil society campaigning for it to address widespread corruption in the political system. On the basis of broad consultations, the ERTC submitted a range of suggestions in August 2004 and some changes on the electoral code were introduced for the 2006 elections.<sup>363</sup> However, deeper reforms, which are partly dependent on the constitutional review process, are still pending and have met with resistance, including from the ruling party.

## 1.2 Scope of corruption in Zambia

Corruption in Zambia is a systemic and omnipresent problem and has become one of the three major concerns of citizens.<sup>364</sup> The economic and political liberalisation processes following the 1991 transition introduced a ‘new culture’ in Zambia that encouraged political leaders to accumulate private wealth irrespective of the method employed. Privatisations, in particular, provided hefty opportunities for rent-seeking and many officials used their positions to acquire state companies or obtained large unsecured loans (interviews, May 2007). As a result, many of the companies bought collapsed due to insufficient investment capital (TI-Z, 2004). In short, during the decade of Chiluba’s government corruption took root in the Zambian social fabric and efforts to uproot these largely tolerated practices will take several decades to come. With hindsight, people today acknowledge the importance of Kaunda’s efforts to control corruption during his period in office through the enforcement of the Public Leadership Code and his personal rule to take a strong stance against corrupt officials and dismiss them when suspected of illicit enrichment (interviews, May 2007; TI-Z, 2004).

The surveys and indices available about corruption in Zambia paint a bleak picture: 87% of the people interviewed for the National Government Baseline Survey (NGBS) of 2004 perceived corruption to be a problem. Further, the NGBS identified a growing tendency for officials to solicit

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<sup>360</sup> See Fifth National Development Plan 2006-2010 for more information, as well as PRSP (2004).

<sup>361</sup> It is hoped that the recent establishment of a public relations office will start to remedy this situation.

<sup>362</sup> See Fifth National Development Plan 2006-2010.

<sup>363</sup> The ERTC made significant recommendations, such as state funding for political parties, public service reform, improvement of the budgeting process, strengthening the management of public funds, and a medium-term pay review to address underpayment of the civil service and decompressing of salaries (Chanda, 2004)

<sup>364</sup> Corruption ranks third among the major concerns of Zambian citizens (61%) following the high cost of living (79%) and unemployment (73%), according to the National Governance Baseline Survey of 2004.

financial rewards in return for a service, which confirms the statement that “corruption seems to be increasing not decreasing despite the strong rhetoric and the institutions put in place to fight it” (State of Corruption Report, 2004; Taylor & Simutanyi, 2007). The NGBS also identifies different forms of corruption, ranging from administrative corruption to nepotism and procurement mismanagement,<sup>365</sup> but does not say anything about widespread bribery in elections.

Rampant corruption has surfaced time and again, in particular in the realm of land alienation (TI-Z, 2004 & 2006). Customary land, administered by local chiefs, covers large parts of Zambian territory over which government exercises little control and the little remaining land is distributed under the “laws of scarcity”. Corruption is also linked to excessive demands from families and officials fearful of not staying in their jobs for lucrative “additional incomes” and taking as much as they can when they can (TI-Z, 2004).

As indicated above, electoral corruption is widespread and all parties have, to varying degrees, bribed voters, with the ruling party allegedly being the main violator of the electoral law (Chanda, 2004). The current government has also failed to show the public consistently that it is willing to put its own house in order.<sup>366</sup> Nevertheless, it seems as if corrupt practices in the presidential elections of 2006 have for the first time shown some decline (interviews, May 2007).

Last but not least, grand corruption is a phenomenon which was most prominently brought to light through the massive plundering of the state during the Chiluba government (ACG, 2007).<sup>367</sup> Today, grand or elite corruption continues to exist but it is not clear whether it has increased, stayed at similar levels or actually decreased (TI-Z, 2006; Taylor & Simutanyi, 2007). However, although the current government mostly denies it, grand and political corruption continues to exist, allegedly involving even larger amounts of money.<sup>368</sup> Little is known in the public domain about whether or not corrupt practices are carried out through networks or are, rather, individual acts. From the revelations of the Task Force investigations, though, it is possible to deduce that grand corruption involves in one way or another political and family networks with mutual protection mechanisms.

### 1.3 History of anti-corruption initiatives and institutional framework

Zambia’s history of anti-corruption efforts can be subdivided into the three different phases of its political and economic development since independence. During the First Republic (1964-70s) corruption was not really heard of and was treated like any other petty offence under the penal code, while the political leadership strongly rejected corrupt practices.

In the Second Republic (1970s to 1990), with Zambia being a socialist one-party state, increasing incidents of corruption were recorded. The government reacted with the introduction of the

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<sup>365</sup> About 40% of the respondents said that they had been asked for a bribe to obtain a public service or licenses and permits. The Police, the National Registration Office, the Courts as well as the Lands Department were the agencies where unofficial payments were frequently requested (NGBS, 2004).

<sup>366</sup> For the 2001 elections, the MMD purchased a significant number of vehicles, which have remained as party assets ever since, despite clear court rulings which require their return to the government. MMD has turned a deaf ear to these claims, which has severely affected its own credibility as a party but also that of the President.

<sup>367</sup> Grand corruption cases of that time include embezzled funds of USD 52 million from the so-called Zamtrop account, the privatisation of mines, large unsecured loans from Zambia National Commercial Bank which almost led to its collapse, and the alleged theft of USD90 million from government funds earmarked to save a bank (Chanda, 2004).

<sup>368</sup> Reports from the Auditor General indicate certain high-level corruption pockets. And the recent publication “Show me the money” by TI-Zambia (2006) provides further insights into the flows of public money in Zambia, including alleged grand corruption. However, the findings need to be used with care, because figures need to be adjusted for inflation and some instances have been resolved by the responsible public agencies. On the other hand, the government mostly denies the existence of grand and political corruption.

Leadership Code in 1973 and the creation of a Special Investigation Team on Economy and Trade (SITET) in 1974. Since incidents of corruption did not decrease, the Kaunda government enacted in 1980 the Corrupt Practices Act, broadening the definition of corruption, and established the Anti-Corruption Commission (ACC), giving it powers to investigate and prosecute through the normal judiciary (Emasu, 2004).

As said before, under the Third Republic (1991 until today) the first government allowed corruption to explode and had no intention of doing anything against it. Although the Chiluba regime enacted a Presidential and Ministerial Code of Conduct in 1994 and reformed the ACC in 1996, these initiatives were purely formalistic, possibly pursuing the objective of showing to the public and international actors that something was being done. It was not until 2002 that anti-corruption initiatives came back to life with Mwanawasa's declaration of "zero tolerance" of corruption.<sup>369</sup>

The first measure taken by Mwanawasa was to establish the above-mentioned Anti-Corruption Task Force, an ad hoc temporary institution composed of several law enforcement agencies (see section 2.2). Although the government has continued to focus its explicit anti-corruption initiatives since 2002 mainly on punitive actions, the ACC started in 2004 to shift its emphasis from sanctions to prevention. As such, it developed the National Anti-corruption Policy and Strategy (NACPS), which has been sent to Cabinet for approval and is expected to be launched in 2007.

### Institutional and legal framework

Zambia has a wealth of law enforcement and oversight institutions that have a role to play in controlling corruption. These include, to name but the most important ones (NACPS, 2007):

- the Anti-corruption Commission (ACC), with a three-pronged mandate to investigate corrupt practices, promote preventive measures and raise public awareness, which has been struggling to assert itself as lead agency to guide the fight against corruption;<sup>370</sup>
- the cited Task Force (TF), whose institutionalisation is currently being debated by the government and development partners alike;
- the Drug Enforcement Commission (DEC), which hosts the anti-money laundering investigations unit. It has recently proven its ability to investigate high-level corruption allegations, which is facilitated by the fact that it does not require the consent of the DPP to initiate prosecutions;<sup>371</sup>
- the Director of Public Prosecutions (DPP), which is said to be a rather weak institution due to its lack of independence from the President;

<sup>369</sup> President Mwanawasa stated in one of his speeches, that the "cost of corruption is no less than cost of war" and the Vice President of 2003 admitted that corruption had reached endemic dimensions and become a matter of concern for all Zambians (TI-Z, 2004).

<sup>370</sup> The ACC, formally an autonomous body, is de facto dependent on the executive above all for its operational independence. One of its major weaknesses is that it requires the consent of the DPP to be able to launch prosecutions. The ACC has been for many years allowed to remain passive and only over the past 3 to 4 years, with significant support from DFID, has it started to reform itself, to strengthen its capacity, to develop a clear institutional vision and to aim at taking the lead in the country's approach to anti-corruption policy.

<sup>371</sup> The DEC was publicly hailed by the President for its successes in investigating and prosecuting corruption allegations, while at the same time he condemned the TF for supposed ineffectiveness (TI-Z, 2006). But the President himself has been criticised for not referring corruption allegations to the appropriate institutions, such as the ACC or TF. An example of this is the investigation of leading public executives in the Ministry of Lands, who had been fired or suspended from office by the President on grounds of corruption (The Times of Zambia, The Post, 19 March 2007).

- the Office of the Auditor General (OAG), which was long neglected, only recently received support for its strengthening and is now playing an increasingly important role in detecting malpractice;
- the Electoral Commission of Zambia (ECZ), which has started to gain more credibility under new leadership;
- the Commission of Investigation or Ombudsman, whose activities are seriously limited by being physically confined to Lusaka and whose independence is compromised by the fact that the President appoints all Commissioners;
- the above-mentioned Zambia Tender Board (ZTB); and
- the Public Accounts Committee of Parliament.

Considering the multiplicity of law enforcement institutions the occurrence of certain frictions about authority are not surprising, although it seems that in most cases the institutions and their leadership draw relatively clear lines about their mandates. One of the main challenges is that for this institutional framework to be effective, close coordination and cooperation seem indispensable. However, despite some efforts to break through the “silo” existence of these institutions coordination and cooperation are weak or non-existent. An exception to this is the Task Force, where officers from different agencies have learned to work together in teams and have broadened their visions. But it is doubtful that their “parent” institutions can be socialised through this experience. More recently, the ACC has also started to develop a new role for itself by elaborating the national anti-corruption policy, for the purpose of which it is now reaching out to other anti-corruption institutions and attempting to create synergies.

In terms of its legal framework, Zambia has enacted a number of important pieces of legislation which contribute towards making corruption more difficult, although this may not be their first and foremost objective. Thus, the Prohibitions and Prevention of Money Laundering Act (2001), Chapter IV on Conduct and Discipline of the Terms and Conditions of Public Service (2003), the Public Finance Act (2004), the Bank of Zambia Anti-money Laundering Directives (2004) and the Electoral Act (2006) are acknowledged in the National Anti-corruption Policy as crucial pillars for the fight against corruption.

On the other hand, important pieces of legislation for effective corruption prevention are still missing, among others a party financing law, a whistleblower act and a reformed procurement law. It is also recognised that harmonising the legal framework and domesticating international anti-corruption treaties need to be priorities (NACPS, 2007). In addition, the full practical application of the laws remains a formidable challenge.

## 1.4 Main players

### Political parties:

Following the return to a multiparty system, there has been a fluctuation of political parties, with currently 36 parties registered. Around 10 of them are half-way active but only three have a noteworthy political weight: the United Party for National Development (UPND), the Patriotic Front (PF) and the above-mentioned ruling MMD.<sup>372</sup> Party politics are not based on ideology, party programmes or a set of policies but on the leadership of individuals. Thus the coalition formed in 2006 to uproot the MMD from power quickly fell apart when they failed in this attempt. The

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<sup>372</sup> Most political parties disappeared for a variety of reasons, which include defeat in elections, the death of party leaders, joining alliances, being dissolved or being deregistered (Simutanvi, 2005).

resulting instability also provides fertile ground for the ruling party's efforts to attract opposition personalities into its own ranks.

#### Parliament:

As said above, the unicameral Parliament, which consists of 150 Members of Parliament (MPs) from single-member constituencies, eight members nominated by the president and the speaker, is not really independent of the executive as cabinet ministers and deputy ministers are also MPs.<sup>373</sup> Given that most bills are generated by Cabinet, Parliament, which is dominated by the ruling party and its strong party discipline, does not provide much opposition or oversight (TI-Z, 2006). Further, although the public accounts committee scrutinises the management of public funds on the basis of the auditor general's report, it is not empowered to take any action, not even to compel the executive to take corrective measures. Nevertheless, political debate between the ruling and opposition parties has been strong and confrontational since 1991.<sup>374</sup> It should also be mentioned that politics in Zambia is slowly being influenced by regional or tribal issues threatening the traditional ethnic and geographical unity of the country.

#### Bureaucracy:

Public institutions in Zambia are largely characterised by their weak capacities as well as a badly paid workforce. While this is not new, the level of corruption and corrupt networks in the civil service mainly emerged during the Chiluba administration. Today, the civil service of Zambia is beset with corruption at different levels: at the administrative or petty corruption level as a survival strategy, at the level of grand and political corruption for reasons of greed and political interest (TI-Z, 2006). Cumbersome administrative procedures and the fragmentation of points of authority further foster corrupt practices. The value system of Kaunda's times, when illicit enrichment was considered to be politically immoral, have long passed, nor does the relative impunity reigning in the country create a deterrent effect, although the existence of the Task Force may have started to change this (ACG, 2007).

#### Civil society:

For years, relations between political authorities and civil society organisations (CSOs) were tense. Some CSOs with a critical stance on corruption and governance issues were met with hostility from the government of Chiluba in particular. However, this situation has improved considerably under President Mwanawasa, and cooperation with CSOs is now sought by the government. CSOs in Zambia, operating mostly at national level, are given prominent coverage by most national media institutions. The most prominent CSOs that deal with anti-corruption matters at the national level are Transparency International Zambia, Integrity Foundation Zambia, and until recently the National Movement Against Corruption. Several other organisations that deal with activities related to human rights, democracy, election monitoring, good governance, civic education etc also carry out corruption awareness activities.<sup>375</sup> Civil society initiatives against corruption are generally highly dependent on donor funds.

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<sup>373</sup> Currently the ruling MMD has 73 seats, plus the 8 presidential nominations and can thus count on an absolute majority, while the PF is the strongest opposition party with 43 seats (Electoral Commission of Zambia, October 2006).

<sup>374</sup> For example, the PF uses the print media to criticise the government in no mild language.

<sup>375</sup> These include the Foundation for Democratic Process (FODEP), Operations Young Vote (OYV), Anti-Voter Apathy Project, (AVAP), Zambia Civic Education Association (ZCEA), Catholic Commission for Justice and Peace (CCJP) and Southern Africa Centre for Constructive Resolution of Disputes (SACCORD), as well as the Citizens Forum, Zambia Land Alliance, Oasis Forum and the Non-Governmental Coordinating Council.

#### The media:

The media in Zambia plays a prominent role in the fight against corruption, although extensive coverage of corruption cases is only undertaken by privately owned media (interviews, May 2007; TI-Z, 2006). There have also been reports that the government has used the procedures of media licensing to control critical voices. Although the constitution secures the right to freedom of expression, there have been incidents of arrests and harassment of journalists. Nevertheless, in particular the privately owned *The Post* newspaper and some TV stations have exposed high-level cases of corruption and forced the government to take action.<sup>376</sup> *The Post* is the most critical newspaper, with good investigative journalist capacities. However, *The Post* has suffered from intimidation and its premises were once set on fire. On the other hand, the government-owned newspapers *The Zambia Daily Mail* and *The Times of Zambia* play mainly to the tune of their master, although they too have become more critical.

#### Private Sector:

The private sector is relatively small and the large majority (83%) of economic activity is owned by small and medium-sized business. Interestingly, in an opinion poll of Lusaka residents in 2004 the private sector came out among the top five least corrupt institutions in terms of perceptions (TI, 2004). Nevertheless, a closer look is needed as it takes two to dance a tango. Also, the identification of corruption in procurement as one of the central risk areas for corrupt practices in the Governance Baseline Survey of 2004 speaks for itself. Generally speaking, the private sector has not been given much attention in anti-corruption initiatives so far (interviews, May 2007). A lot of ground is still to be covered to develop a more objective understanding of the role of the private sector in corruption and to bring it on board for developing remedies. Part of the private sector has realised already that it needs to be part of the solution.<sup>377</sup>

#### Development partners:

Since independence, development partners (DP) have provided large amounts of assistance to Zambia, amounting to around 40% of the national budget (Taylor & Simutanyi, 2007). Starting in early 2003 and after hopes for strong government leadership in donor coordination had proved unrealistic, a group of bilateral DPs used the momentum of the *Rome Declaration on Harmonisation* to agree on a framework for putting harmonisation in progress (HIP) into effect.<sup>378</sup> Thanks to this initiative, coordination is growing. Currently, a series of DPs has started to work on arrangements for direct budget support or is about to do so.<sup>379</sup> Most DPs in Zambia who support anti-corruption work (Denmark, Finland, Ireland, Netherlands, Norway, the UK and the US) have so far provided financial and technical assistance to the Anti-Corruption Task Force and civil society organisations such as TI-Zambia. On the other hand, long-term assistance to the ACC has been provided mainly by a single donor, DFID (see section 2). DPs are by and large coordinating their efforts through a good governance sector group but so far no specific anti-corruption sub-group has been formed, making it difficult to focus on specific issues relevant to anti-corruption. In

<sup>376</sup> Such as the publication in *The Post* of the information about the Zamtrops account (see 2.1.) or the lies of a former Minister of Information and Broadcasting who was finally sacked after a TV station had broadcast his lies.

<sup>377</sup> The Institute of Lusaka Directors and Lusaka Stock Exchange, for example, have compelled large business to begin to look develop codes of conduct (TI-Z, 2006), and the Zambian Business Forum (ZBF) has partnered with TI-Z and the Millennium Challenge Account Threshold Project for Zambia. Their role in the project is to ensure private sector participation in regulatory and process reform and the development of corporate standards of conduct.

<sup>378</sup> The HIP action-plan covered five broad areas: an overall aid policy for Zambia; a commitment to SWAPs and preparations for direct budget support; common planning, monitoring and reporting; human resources initiatives (both government staffing and donor-funded TA); and information management (sharing analytical work as well as HIP monitoring). Participating DPs are Denmark, Finland, Ireland, The Netherlands, Norway, Sweden and the UK.

<sup>379</sup> See [www.oecd.org/dataoecd/42/23/33814093.pdf](http://www.oecd.org/dataoecd/42/23/33814093.pdf)

addition, the Millennium Challenge Account Threshold Project for Zambia is running a two-year USD 22 million project to reduce corruption in key areas for private sector development.

## 2 The facts of anti-corruption policy making

### 2.1 Origin and rationale of major anti-corruption initiatives (2000-2006)

During the run-up to the elections in 2001, the privately owned media (*The Post* in particular) exposed a number of corruption cases related to election campaign and involving high-level public figures. Ironically, the arrest of the newspaper's editor and two opposition party members accused of defamation of the President helped trigger the unexpected revelation of massive plunder of state resources and corruption networks under the Chiluba regime (TI-Z, 2004).<sup>380</sup> As a result of these media investigations, the population started to demand action to redress the problem and civil society organisations transformed the spirit of the public at large into collective action against political abuse and corruption (ACG, 2007).<sup>381</sup>

On the other hand, the narrow margin of the presidential election victory and the fact that the MMD did not have an absolute majority in Parliament resulted in weak legitimacy during Mwanawasa's first term (see section 1.1). Against this political background, many political analysts in Zambia agree that the President "had no other option" than to take a strong stance against corruption.<sup>382</sup>

### 2.2 Design of explicit anti-corruption initiatives

#### Process and stakeholder involvement in NACPS

The ACC's strategic plan 2004-2006 envisioned the development of a national corruption prevention strategy to institutionalise corruption prevention in both the public and private sectors.<sup>383</sup> For this purpose, the ACC, with technical and financial support from DFID, laid out a policy formulation process.

In a first step a national consultancy team, consisting of renowned civil society organisations and individuals such as from the Integrity Foundation, TI-Zambia and lecturers from the University of Zambia and receiving support from the DFID advisor to the ACC, was contracted to produce discussion drafts of the National Anti-Corruption Policy and Strategy (NACPS).<sup>384</sup> The terms of reference for this assignment indicated minimum requirements for coordination with other relevant public agencies and the desire for linkages with other governance reforms.

In a second step, the draft policy was submitted for consultation to a broad range of stakeholders from civil society, business, public agencies and the House of Chiefs as traditional local authorities. For this purpose, workshops of between 70 and 80 people were organised in the country's nine

<sup>380</sup> As part of the defence, the accused demanded access to a bank account in the Zambian National Commercial Bank in order to prove their claims that President Chiluba was a "thief". This account was the gateway to the Zamtrop account, which had been used by the former President to bribe the Chief Justice and others to pave the way for a third term, and to distribute money among family members and others.

<sup>381</sup> In particular, an association of CSOs called Oasis Forum, Transparency International-Zambia, the Forum for Democratic Development and different church bodies.

<sup>382</sup> Interviews with a variety of people, such as journalists, CSO representatives and politicians.

<sup>383</sup> ACC Zambia [www.acc.gov.zm](http://www.acc.gov.zm)

<sup>384</sup> See TOR for this consultancy, Section 3.

provinces. Facilitation of group discussion was undertaken in partnership between the ACC, other public agencies and civil society organisations.<sup>385</sup> Interest in participation was so strong that not all interested parties could participate in the workshop and it is not clear whether any group or sector felt deliberately excluded.

In a third step, the results of the consultations were synthesised by the ACC and a consultant team into a draft policy, which was presented at a final workshop for relevant stakeholders at the national level. Subsequently, the ACC submitted the NACPS to the Cabinet Office for official approval and adjusted its name to National Anti-Corruption Policy.

The formulation of the policy has enjoyed broad support from the public and private sectors. From all interviews held there seems to have been widespread consensus about the content and orientation of the anti-corruption policy, with a few exceptions. An often cited example was the resistance of about half of the traditional chiefs to define “gratifications” as corruption because they were seen by most as part and parcel of the culture.<sup>386</sup>

Despite broad consultations with a wide range of players, it seems as if some crucial groups of actors whose unconditional support is needed for successful implementation have not participated actively in the policy design and therefore it is questionable whether they will “own” it. The Group of Permanent Secretaries (the top civil servants of government agencies) have reportedly entered a series of reservations, although it is not clear how substantive these are. The other group is political parties and their representatives in government, namely the Ministers and Deputy Ministers, who will bear final responsibility for action taken or not taken within their institutions.

### Knowledge base

The Government of Zambia deliberately conceived the production of the above-mentioned National Governance Baseline Survey (NGBS) in order to provide a knowledge base for the subsequent development of the NACPS. The NGBS was commissioned by the government in 2003 with a specific focus on corruption, its occurrence, frequency, causes and consequences.<sup>387</sup>

In addition, DFID had commissioned prior to NACPS an assessment of the extent to which anti-corruption measures had been mainstreamed into existent governance reforms. The purpose of this was to orient the NACPS so as to complement ongoing “implicit or indirect” anti-corruption efforts. Further, the consultant team preparing the first draft of NACPS could draw on the Anti-corruption Legal Assessment Study which had been produced by USAID, as well as on a small body of research conducted by civil society organisations, in particular TI-Zambia, such as regular national corruption perception surveys and a study on the national integrity system. Also, different sectors undertake a series of surveys or diagnostics. Although the public expenditure tracking surveys (PETS) in the health and education sectors had not been available for the design of NACPS, they provide a significant basis for the upcoming formulation of its implementation strategy.

On the other hand, not much was known or researched about specific forms and manifestations of corrupt practices, whether they are performed as individual acts or as part of mutually protective networks or both. Specific vulnerabilities to corruption in key sectors and institutions, their dynamics and driving forces have also not so far been explored, posing a risk that the envisioned

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<sup>385</sup> Including the Zambian Business Forum, the Law Association of Zambia, the Integrity Foundation and TI-Z.

<sup>386</sup> Gift-giving to traditional chiefs has ultimately generated public controversy as this institution is abused by both certain investors and certain chiefs in order to agree through lucrative gift-giving on scarce land use, in particular for mining, tourism projects and the like. As a compromise solution it had been suggested that a sort of threshold for unacceptable gratification gifts be established in consultation with the communities.

<sup>387</sup> Financial support for the NGBS was mainly provided by DFID through the World Bank as well as the GRZ. Interviews of a representative sample of people were conducted with 1500 households, 1000 public officials and 500 business people in urban and rural areas across the country.

measures may not appropriately address the problems. Finally, an understanding about what behaviour is acceptable and non-acceptable to the local population is thin to non-existent.

From an institutional perspective it is a constraint that the ACC itself has not developed its research capacity (Otieno, 2007), both in terms of systematically studying any of the areas mentioned above or in terms of measuring and analysing corruption trends on the basis of information it regularly receives through complaints.

### Content and priorities

Initially, President Mwanawasa's Zero Tolerance policy against corruption consisted in the investigation and prosecution of large-scale corruption cases from the Chiluba regime. It was only in 2004 that through the ACC and aided by advocacy from civil society as well as careful advice from donor agencies, the government came to realise that a coherent corruption prevention approach must complement the work of the Task Force. The government acknowledged the need to bring the variety of institutions mandated with specific tasks to address corruption, as well as related broader governance reforms, under one umbrella anti-corruption policy and to coordinate the many participating agencies for implementation.

### The punitive approach – Task Force

The anti-corruption Task Force was created as an ad hoc institution with a mandate to recover stolen assets and to bring the perpetrators to justice. The TF's investigations and prosecutions were to focus on alleged cases of corruption that had occurred during the Chiluba government between 1991 and 2001 and it originally had a limited lifespan until December 2006. Its mandate, though, was recently extended by the President for an indefinite time in order to allow the Task Force to finalise its work. As a non-permanent institution, the Task Force relies on the secondment of personnel from its main members, such as the ACC, the police, the DPP and the DEC, and operates under the directions of an Executive Chairman with guidance from a board consisting of the heads of the aforementioned institutions.

The creation of the TF has been greeted with a mixed reaction. In particular, in the beginning it met with little understanding in the country as it was perceived as yet another institution that would consume scarce resources and questions were raised as to why the ACC was not strengthened instead. The different organisational cultures, rules and regulations, guiding laws and competition for turf and influence of the participating public institutions also had to be dealt with. On the other hand, development partners immediately provided significant financial and technical support as the TF raised hope of recovering millionaire assets and demonstrated that political leaders would not be beyond reach.

Investigations and prosecutions of the corrupt practices of the current government fall formally under the ACC's mandate although the DEC has potential overlapping authority, in particular when the alleged corrupt practices are related to money laundering.<sup>388</sup> As yet there is neither a clear policy nor consistency in the government's approach to implementing its Zero Tolerance approach within its own ranks.<sup>389</sup>

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<sup>388</sup> The investigations in the Ministry of Lands were entrusted to the DEC for example, instead of using the ACC. The President has also publicly criticised the ACC for its ineffectiveness, prompting the public to come out in defence of this institution and asking instead why the ACC is "allowed" by the government to be relatively weak.

<sup>389</sup> Despite acknowledging the importance of some widely publicised dismissals of high-level officials from both political and civil service positions, the public and independent media criticise the President for a perceived selective punitive approach which protects in particular his allies and friends.

## National anti-corruption policy

The long-term vision of the national anti-corruption policy is that “the citizenry and the government shall achieve zero tolerance of corruption through effective and acceptable harmonised and coordinated actions against corruption” (NACPS, 2007). The rationale for this approach is the recognition that prevention is more effective than the cure and that close collaboration between the so-called corruption prevention institutions is a crucial precondition for success.<sup>390</sup>

The spirit of the policy is to complement other governance reforms in order to create the much needed synergies between so far uncoordinated, rather isolated and implicit corruption prevention measures. Hence, the national anti-corruption policy enshrines the government’s commitment to:

- implement provisions from international treaties,
- coordinate prevention institutions, strengthen oversight institutions, build capacity and increase accountability and transparency in the exercise of public authority,
- integrate corruption prevention into the routine business of public and private institutions, and implement mechanisms to control, monitor and report corruption at service delivery points,
- work with society on corruption prevention, and
- strengthen inoperative or weak laws and regulations.

This policy framework foresees action on institutional capacity development as well as behavioural change.

Particular emphasis is put on corruption at service delivery points in line with the results of the NGBS. The policy envisions specific measures to be taken by all actors involved (public agencies, business and civil society/citizens). Activities in eight pilot institutions to streamline administrative processes, limit opportunities for corruption and work towards behavioural change have been started even before the final approval of Cabinet.<sup>391</sup> On the other hand, the policy does not seem to address properly issues such as grand and political corruption. Last but not least, the national anti-corruption policy does not make specific reference to the government’s approach on investigation and prosecution.

## Integration with other governance reforms

During the policy formulation, serious efforts have been made to identify the relevant broader governance reforms to which anti-corruption measures need to be linked. The planned creation of an inter-agency coordination body under the leadership of the ACC aims at creating a forum for discussion, harmonisation and synergy. Furthermore, a corruption prevention partnership organisation programme is to be developed.

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<sup>390</sup> The recent shift of government policy towards corruption prevention is a result of the deliberations of several actors but primarily of the ACC itself, which realised that prosecutions would have a limited effect in the context of a dysfunctional justice system. The ACC had received institutional development support from DFID since 2001, including for the preparation of a strategic plan 2004-2006 which put emphasis on the need to develop a national corruption prevention strategy. Civil society organisations’ advocacy and the continuing exposure of malpractice through the press also pointed to the need to change practices and behaviours in addition to deterrence.

<sup>391</sup> On the basis of the NGBS, the public agencies which were perceived to be most corrupt were selected as pilots. They include the Ministry of Lands, the Immigration Office, the Zambian Revenue Authority (Customs), two city councils, the Pension Fund and the ACC itself. The latter is an exception with regard to the mentioned selection criteria but it wants to lead by example. This work is mainly supported through the MCA Threshold Project and DFID.

Given that NACPS is currently still in the form of a policy draft, it is not clear in which way linkages with core governance reforms will be established during the implementation phase. Specific challenges lie in integrating the envisioned preventive measures with PEMFAR reforms and public sector reforms, specifically in the realm of human resources management regarding appointments, performance assessments and promotions. Both of these linkages are crucial for achieving the policy's stated objective to introduce corruption prevention into the routine business of public institutions.

On the other hand, links with efforts to control widespread electoral corruption are not well established.<sup>392</sup> And except for a reference to the need to reconcile corruption prevention with corruption investigation capacities, it is not clear in which way the national anti-corruption policy will be linked to justice sector reform. Despite these apparently missing links, a caveat needs to be made because some of the issues may be addressed in the development of the implementation programme, in particular through the aforementioned partnership organisation programme for corruption prevention.

## 2.3 Provisions for implementation

### Roles and responsibilities

The policy makes an attempt to identify roles and responsibilities for participating public agencies in line with their mandates and the final definition of roles and responsibilities will be part of the implementation strategy and plan. It should be noted, though, that according to a recent review there is need for further refinement and clarification of roles and responsibilities (Otieno et al., 2007). First, the vast majority of measures – which are many – fall within the responsibility of the ACC, often together with the Cabinet Office. While the ACC is to be the lead agency for overall policy coordination, the scope of its assigned responsibilities run the risk of overburdening its capacities. Second, when it comes to streamlining cumbersome procedures in public service delivery, no mention is made of the responsibility of the relevant ministries for taking the lead, since the role of the ACC will mainly be to provide advice. Nor is any reference made to who will be responsible for the mainstreaming of anti-corruption measures into the routine business of the government and private sector. Finally, there still seems to be some mystery around the role of the Good Development Unit (GDU) based in the Ministry of Justice, which formally has the role of strengthening linkages between public agencies to enhance good governance, including anti-corruption work.

On the other hand, the Cabinet Office is responsible for institutional coordination, which is taken up in the NACPS. Hence, it is positive that the ACC will report directly to the Cabinet Office and that the latter is formally co-responsible for most measures, because “corruption prevention needs a highly placed political champion within government” (Otieno, 2007). Furthermore, the upcoming period for the design of an implementation programme and monitoring system provides an opportunity to assign roles more clearly in line with a realistic assessment of each institution's capacities.

### Monitoring and communication

Since NACPS is still pending approval, a monitoring system and communications strategy do not yet exist. Both will be developed as part of the implementation strategy.

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<sup>392</sup> The Election Commission is not mentioned as part of the national framework of corruption prevention institutions and it is not clear if corruption prevention measures shall be introduced in political parties.

## Resources

To date, cost estimates have not yet been made. They will also be part of the design for the implementation strategy, in which concrete activities will be identified. For the same reason, funding sources have not been identified either. However, as an indication for funding prospects it should be noted that over recent years the government has increased allocations for corruption prevention, in particular to the office of the Auditor General and to a lesser degree to the ACC. However, allocated funds have not always been released by the MOF, which is considered by some deliberately to be putting obstacles in the way of the effective performance of these institutions. Development partners have also shown strong interest in the government's prevention policy. But they expect the ACC at the same time to develop stronger leadership and to maximise the effectiveness of resources already at its disposal.

## 2.4 Support of development partners to major anti-corruption initiatives

Development partners (DP) in Zambia, which had tried to pressure the Chiluba regime to embark on meaningful good governance reform, including the fight against corruption, stood ready to support the incoming government on its governance agenda after the elections of 2001. While they played a rather proactive role in promoting broader governance reforms,<sup>393</sup> financial support and technical assistance for anti-corruption efforts were provided initially in a rather reactive way.

In 2001 there had not been any independent comprehensive and systematic diagnosis of the forms and magnitude of corruption in Zambia and development partners themselves did not have a shared understanding of or common approach to how the problem could or should best be addressed. Technical and financial support to public agencies that played a key role in a country's integrity system was rather compartmentalised and not closely coordinated. According to interviews, a more holistic vision of the interdependence of these public agencies has only recently started to emerge. Interviewed development partners have attributed this state of affairs partly to the fact that during the early stages of anti-corruption work in Zambia, most DPs did not have generalist anti-corruption practitioners on the ground, but rather broader governance advisors with strong economic and legal backgrounds.

Several donors have provided significant support to the Task Force since early on. On the other hand, the ACC received most of its support from a single donor through a multi-year and multi-million dollar programme.<sup>394</sup> DFID was widely given credit by the government and other DPs for its support to strengthening the institutional capacities of the ACC. More recently, the Millennium Challenge Account Threshold Project has started to support the ACC in strengthening its role in the management of Integrity Committees in the above-mentioned pilot agencies.<sup>395</sup> In addition, a number of bilateral DPs created a basket fund to support civil society organisations in their efforts to raise awareness and educate the public, conduct regular surveys, carry out research and engage in consistent advocacy work to demand change.

In terms of supporting the concrete development of the NACPS, most development partners have played a backbench role, limiting their contribution to providing comments at different stages of the process. The exception is DFID, which can be explained by its prominent role in providing long-term assistance to the ACC, including an international anti-corruption advisor housed in the ACC

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<sup>393</sup> This is particularly true for PEMFAR and the National Public Sector Capacity Building Programme.

<sup>394</sup> DFID has provided around GBP 3 million to the ACC since 2002 (interview with DFID – Zambia).

<sup>395</sup> The MCA Zambian Threshold Project is administering a roughly USD 20 million programme over the period 2006-2008 with the aim of helping the country to fulfil criteria for fully fledged MCA support, which is expected to consist of roughly USD 500 million for the next 5 years (interview with Threshold Project staff).

for several years. DFID has played a major role in helping to conceive an orderly, systematic and phased approach for the development of the NACPS.<sup>396</sup>

## 3 Analysis

### 3.1 Contextual factors that favoured or impeded anti-corruption policy making

(+) Massive state plunder caused a public outcry and required a political response

In a country where corruption had been relatively controlled until the early 1990s, media revelations of millionaire looting of the state coffers by the Chiluba regime caused a public outcry. Continuing exposure of grand corruption further drew attention to the gravity of the scourge and heightened demands by opposition politicians and civil society for the problem to be addressed seriously. Analysts have repeatedly stated that the “government could not do nothing about corruption”.

(+) Electoral fraud and pending constitutional reform further spurred public pressure

Widespread electoral corruption and the large powers vested constitutionally in the executive have not been adequately addressed so far with the government dragging its feet on both fronts. Growing public discontent about this state of affairs as well as intensive advocacy by civil society organisations and the political opposition have contributed to putting further pressure on the government.

(+) Advocacy from civil society organisations helped to shift the focus towards prevention<sup>397</sup>

Civil society organisations, in particular TI-Zambia, consistently pointed to institutional weaknesses and governance failures and campaigned for systemic change.<sup>398</sup> At the same time, the links between TI-Zambia and the ACC further contributed to the latter taking up prevention as a priority.<sup>399</sup>

(-) The focus on sanctions diverted attention from preventive anti-corruption policy

Both the government and DPs initially put most of their efforts into the punitive approach of the former government. While this has reaped some fruit, in particular with the recent conviction of Chiluba by a London court, it drew attention away from the need to develop medium- and long-term institutional responses to prevent corruption from happening.

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<sup>396</sup> The terms of reference for the development of NACPS, which was largely financed by DFID, provide good testimony for this.

<sup>397</sup> Despite its broad mandate, which includes corruption prevention, the ACC had primarily focused on investigations.

<sup>398</sup> TI-Z produced studies on the country’s national integrity system, analysed deficiencies in certain sectors and legal provisions, and carried out national corruption perception surveys, among others – see [www.tizambia.org.zm](http://www.tizambia.org.zm)

<sup>399</sup> The current Executive Director of TI-Z used to be a staff member of the ACC and knows both worlds, while the ACC has realised itself that it needs allies within and outside the government.

(-) Insufficient knowledge about forms and manifestations of corruption in Zambia hampers the design of appropriate solutions

The lack of knowledge about concrete forms and manifestations of corrupt practice, as well as the absence of a political mapping of the motivations and interests of key players, in particular those that could resist reform, constitute a challenge both for the NACPS and the upcoming development of implementing strategies and programmes. Also, in a country where traditional value systems co-exist with the principles of a modern Weberian bureaucracy it is important to understand what behaviour is acceptable and unacceptable to the local population in order to design adequate measures to tackle corruption.

### 3.2 Main drivers and opponents of change

(+) Political profiling strategy of President Mwanawasa

Although President Mwanawasa had denied during his election campaign of 2001 that there was corruption in the then government, as incoming President he showed political astuteness by taking a strong stance against corruption, partly to respond to the scandalised population and partly to develop his own political party base. Taking on corruption as a flagship issue promised to generate political capital.

(+) Realpolitik or ambivalent political will?

There is no doubt that the current President has cracked down on the high-level corruption of the former government. However, when it comes to his own administration, he has been criticised for selective political will. In fact, a political interpretation of his anti-corruption actions paints a rather ambivalent picture. On the one hand, he dismissed without warning high-calibre people from his Cabinet, such as the former Minister of Land and her close aides, he ensured that they were investigated, he supported the development of the NACPS, and budget allocations for watchdog organisations such as the Auditor General's office and the ACC have been increased. On the other, he has been reluctant to extend the mandate for the TF to cover corruption cases occurring in his own government, he tried to shield his Permanent Secretary of Health against prosecution for vast corruption,<sup>400</sup> the ACC is "allowed" to continue to be weak, the government revoked the national broadcasting authority and withdrew the Freedom of Information bill from Parliament, leading figures of his party are not brought to justice for hefty corruption,<sup>401</sup> and the findings of the Auditor General's report have not been acted upon adequately (a situation that has started to show some improvement).

The question that many grapple with is whether this is a result of "realpolitik" as even though the president has enormous constitutional and personal powers his hands may be tied, or whether he does have a selective political will and plays the flute according to his personal tunes.<sup>402</sup> An argument for the latter can be found in the fact that large parts of his extended family are alleged to occupy top public positions, leading the public to speak about the "family tree" in power.

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<sup>400</sup> For example, in October 2006 President Mwanawasa said that the Task Force on Corruption might be disbanded, giving as reason its failure to recover stolen assets. This decision was reversed following pressure from civil society, The Post newspaper and development partners.

<sup>401</sup> This includes the General Secretary of the MMD, who was to be arrested for allegations of serious corruption by law enforcement agencies but is still free today.

<sup>402</sup> An upcoming report on "Governance and political economy constraints to World Bank CAS priorities in Zambia – a diagnostic" (currently in draft) by Taylor and Simutanyi (2007) provides an insight into the Zambian political economy.

(+) ACC pursues a new public value role based on corruption prevention

During the government of Chiluba, the ACC existed in a state of passivity out of which it has only gradually come to life. A multi-year institutional development project helped the ACC to reorganise and strengthen its institutional capacities, which had been very weak. Nevertheless, the ACC continued for some years to be a rather inward-looking institution whose potential importance was initially overshadowed by the Task Force. Thus, despite broad public support for the existence of the institution as such, the ACC was criticised from many sides for its ineffectiveness and its *raison d'être* has been questioned more than once. In addition, the ACC had been received with hostility in many public institutions, as it was perceived to be a “spy” instead of a facilitator of institutional change. Against this context, the ACC’s efforts to carve out a niche to generate public value have gradually started to bear some fruit. It realised that it needed to work with others if it wanted to avoid isolation and in the end its own elimination. NACPS provides an opportunity for the ACC to raise its profile, although it still has a long way to go.

(+) Democratic checks and balances have some weight

Despite the concentration of power in the position of president, democratic checks and balances do or can have some weight in Zambia. This is especially evidenced in the opposition parties, which even though the MMD holds an absolute majority of seats in Parliament are able to challenge the government. The mutually reinforcing interplay between an increasingly strong Auditor General’s Office and a relatively aggressive Public Accounts Committee in Parliament has proven to be a healthy check on the executive’s spending and accounting. Finally, the Electoral Commission of Zambia has started to assert itself under its new leadership and achieved a perception of reduced electoral bribery in 2006.

(+) Private media – a watchdog that bites

The private newspaper *The Post* has developed a widely recognised capacity not only for investigative journalism but also for generating public debate and exerting pressure on the government about a variety of public policy issues. It has repeatedly brought to light corruption allegations from all times – the previous and the current regime. *The Post* has also come out strongly in defence of anti-corruption institutions, such as the ACC and TF, at moments when the President made careless public remarks about them, criticised them for supposed ineffectiveness or signalled their looming disappearance.

(+) Civil society organisations – other watchdogs that bark loudly

Since return to multiparty democracy, civil society organisations have gained considerable strength and voice, not only in the realm of anti-corruption work but in the field of democratic governance in general. A range of civil society organisations has gathered under the umbrella of the Oasis Forum and exerts opposition to the monopoly of the executive.<sup>403</sup> Political analysts have observed that the pressure of CSOs is at times so strong that the government has no other choice than to listen and act, at least somehow.<sup>404</sup>

(–) Significant parts of the state bureaucracy pursue the status quo

The state bureaucracy is composed still today of camps that remain loyal to Chiluba or have benefited in different forms from the former system and who are for that reason at best “lukewarm”

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<sup>403</sup> For example, the Oasis Forum rallied against the attempts of Chiluba to run for a 3<sup>rd</sup> term, civil society organisations have been campaigning strongly for the constitutional review process as well as for electoral reforms.

<sup>404</sup> Interviews held in May 2007 for this study.

in terms of their support for anti-corruption initiatives.<sup>405</sup> Much emphasis has also been placed on the crucial role that permanent secretaries play in the prevention of corruption, but so far there have been signals that they may try to water down aspects of the NACPS and that they may be reluctant to establish ministerial or agency-level internal watchdog groups.<sup>406</sup> It is also doubtful whether or not ministers have yet “bought” the story of NACPS for their administrations. The President is reported to be encouraging them to take NACPS on as their own in order to overcome shortcomings in the high-level ownership of the policy.<sup>407</sup>

(–) The lack of blaming and shaming is a missing link in social control

During the one-party state, open acquisition of wealth was not criminalised but was considered to be politically immoral. In line with this principle, former President Kaunda dismissed officials suspected of illicit enrichment, an attribute of political leadership which during his time as President was not much valued but which is now nostalgically missed. Although it did not prevent corruption scandals from happening, public officials did not get rich overnight and the President did not even have a private house. The lack of public blaming and shaming, together with a still widespread administrative and criminal immunity for stealing public assets, is seen by many as a failure of social control. This aspect, which is considered by some political analysts to be part of the culture, contributes to soaring levels of public corruption and feeds resistance to making corrupt practices more difficult.<sup>408</sup>

### 3.3 Rational and political underpinning for the choice of policy option

Zambia’s anti-corruption approach could be described as starting with a multi-purpose big bang by lifting the immunity of the former President and targeting high-level investigations and prosecutions. This sanction-oriented zero tolerance was aimed at allowing the current President to consolidate his own power base, to soothe the outraged public, to create trust amongst the development partners and to instil hope that public affairs would be managed differently. Judging from the apparent mood among the wide range of people interviewed for this study, Mwanawasa’s strategy has been successful, so far.

Nevertheless, increasing pressure on the government to address rampant corruption today, paired with the search of the ACC for a new public value role, have paved the way for greater emphasis on corruption prevention. The shift to a holistic preventive policy also allows the government to divert attention from the demand to investigate corrupt practices in the current administration. This is not only a matter of political convenience but also raises again the question whether it is an expression of “realpolitik” or a lack of political will to go beyond cosmetic change.

The perception that NACPS focuses largely on service delivery corruption can be seen as a strategy of starting with feasible entry points and of catering for the most immediate needs of the population. The fact that activities in eight public agencies have been started even before the official approval of the policy could be seen as a case in point for this argument. On the other hand, the strategic orientation of NACPS may also be a reflection of the government’s demonstrated reluctance to address deeper political reforms and its resistance to breaking through the status quo.<sup>409</sup>

<sup>405</sup> In particular the government house selling scheme, which Chiluba carried out as a strategy to buy support for his 3<sup>rd</sup> term, benefited a large number of people who are likely to feel loyal to him.

<sup>406</sup> Interviewees have reported that the Permanent Secretaries tried to eliminate the review of the Finance Act as part of the NACPS, allegedly in parts because they did not want to lose discretionary grants and because they argued that such a review should fall under PEMFAR.

<sup>407</sup> Interview with the President’s Office.

<sup>408</sup> The openly displayed wealth of many public servants who are said to be richer than private sector people is not questioned by the public, for example (TI-Z, 2004).

<sup>409</sup> It is true that the reform of the procurement law, the finance act and the electoral code are foreseen in NACPS but judging from the interviews with a wide range of key stakeholders from these fields, it is

It is not entirely clear why the punitive anti-corruption approach of the government has not been more closely tied to the national anti-corruption policy. One argument certainly lies in the fact that from the outset the aim was to create a corruption *prevention* strategy and issues related to the continuation of a sanction-based approach were apparently largely absent from discussions. Nevertheless, clear decisions in this area are indispensable for two reasons: a) for the government to be credible in its zero tolerance approach towards corruption it needs to extend sanctions, whether administrative, criminal or political, to high-level current malpractice; and b) for the ACC to become a credible and trustworthy anti-corruption institution its strategic focus and political mandate need to be clear.

Finally, one of NACPS' central objectives, to introduce anti-corruption measures into the routine business of public agencies across the board, reflects a recognition that corruption is omnipresent and requires a holistic response. However, if this aim were implemented without a strategic sequencing over probably several years, it would overburden the capacities of participating institutions, in particular those of the ACC, which has to accompany and monitor the process. It would not allow important lessons to be learnt from pilot projects and would run a serious risk of diluting effort. The central idea of establishing Integrity Committees (IC) in all public agencies was taken from the anti-corruption strategy in Tanzania, but their ineffectiveness so far and the difficulties encountered there in rolling out ICs throughout the administration in a meaningful way have not been taken into account.<sup>410</sup>

### 3.4 Role of development partners

With no systematic diagnosis of the state of corruption becoming available until 2004, it is scarcely surprising that development partners did not have a common understanding of the major problems of corruption in Zambia. Although corruption was an issue that DPs urged the government to take action upon, a holistic approach was not pursued. Rather, corruption was addressed implicitly through governance reforms aimed at strengthening the effectiveness, efficiency and accountability of public agencies. Particular emphasis was given to reforms of the financial management system, both because of its core function in a country's public administration and because key DPs envisaged providing general budget support in the future. If corruption was considered at all, it was from a financial angle, but corrupt practices as part of the political governance system was not high on the agenda.

As explained before, DPs have been instrumental in supporting the anti-corruption Task Force, which was assessed as being the right thing at the right time given the political circumstances of the time (see section 2.4). But with hindsight, the interviewed DPs exercised self-criticism and stated that too little had been done to mainstream an explicit anti-corruption dimension into core governance reforms. Also, despite their belief that coordination between DPs in Zambia is good, there has been little systematic exchange of information and approaches between DPs, and no anti-corruption coordination group, for example under the umbrella of the governance Sector Advisory Group (SAG), has been established. Interviewed DPs expressed concern about the fact that the staff of DPs on the ground had little expertise and few practitioners with knowledge about anti-corruption policies.<sup>411</sup> Such expertise could have provided early strategic policy guidance to DPs themselves.

Development partners in Zambia do have considerable weight and the crucial question of whether or not they should make more use of it to exert pressure on the government was raised at several occasions. For example, development partners under the leadership of the Swedish Ambassador came out strongly in public against the decision of the then DPP to drop the investigation of

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doubtful whether NACSAP will play a role in the practical implementation of such laws, be it through facilitating institutional coordination, strategic monitoring or other mechanisms.

<sup>410</sup> See Tanzania case study in this report.

<sup>411</sup> DFID and USAID must be mentioned as exceptions.

corruption allegations against the former Permanent Secretary of Health. But it was felt that DPs could use their political leverage more often and intensively not only at the technical level but in particular at the diplomatic level.

### 3.5 Interplay with other related governance reforms

Conceptually, NACPS is well linked with other core governance reforms in Zambia and has been conceived so as to complement these. The analysis of governance reforms from an anti-corruption angle, which preceded the drafting of NACPS, pursued precisely this purpose in order to help give the anti-corruption policy a strategic direction. The design of NACPS also foresees the creation of inter-agency coordination under the leadership of the ACC and with the support of the Cabinet Office. But it is not clear whether this refers only to the specific anti-corruption initiatives to be undertaken within the framework of NACPS or whether the ACC will proactively extend its coordination efforts to the relevant institutions of other core governance reforms. However, a concrete approach to implementing these arrangements has yet to be developed as part of the NACPS implementation strategy. An effective inter-agency and inter-programme coordination constitutes in any event a formidable challenge for the ACC and any such effort will require complementary efforts by DPs to help mainstream an anti-corruption dimension into the different reform programmes and projects that they support.

### 3.6 Factors that facilitate or hinder implementation

Given that the National Anti-corruption Policy is still at the approval stage, except for some pilot activities (see section 2.2), the arguments put forward in this section point to potential factors that may facilitate or hinder implementation of NACPS.

#### Nationwide public will is both an asset and a liability

The government's anti-corruption initiative comes at a unique moment in time. The country does not have a long history of failed anti-corruption initiatives which have led to public cynicism in other countries. The country is peaceful and of a rather unitary nature (despite recent tensions over ethnic and geographical issues) and its society searches for consensus rather than conflict. In such a context, the high expectations of the public regarding anti-corruption work can turn into an important pressure factor for the government to deliver on its promises. However, the risk is that these expectations can be easily frustrated if the government is not willing or able to provide satisfactory responses. Its reluctance to further the process of constitutional reform already constitutes a source of growing frustration.

#### Caution is needed in the roll-out of Integrity Committees to all public agencies

The establishment of Integrity Committees in all ministries and public agencies is one of the central initiatives under NACPS. The current approach to starting in eight pilot institutions is commendable as it allows scarce resources to be concentrated for support, experience to be tested, important lessons to be learnt and corrective action to be taken where needed. However, the piloting approach is not so much the result of a strategic sequencing but rather due to a lack of resources. Experience from Tanzania shows that an unsequenced large-scale introduction of such ICs can easily result in failure of an originally good idea.

#### Political protection may undermine the credibility of the anti-corruption crusade

The past six years of government have shown that certain people and public officials close to the MMD can be shielded against investigation or prosecution for irregularities. This political interference can undermine public confidence in the government's anti-corruption crusade.

A proactive communication strategy is indispensable

No preventive anti-corruption strategy is as attractive to the public as a number of painful sanctions for despised wrong-doers. Zambia is no exception and the public has a strong desire that corrupt officials, including from the current government, be brought to justice and that stolen assets be recovered. A solid and proactive communication strategy is needed to convince the public about the benefits of systematic prevention and to report on progress. The challenge will lie in keeping the momentum while not creating fatigue or public disillusionment with official anti-corruption efforts. Part of this strategy will need to consider how to line up the President as a crucial ally as he has the power to give the NACPS a push but also tends to make careless public statements which cause uncertainty and misunderstanding and risk having other adverse effects.

The design of the implementation strategy requires support

The anti-corruption policy lays out the general courses of action to be taken in order to control corruption, but concrete targets, responsibilities, timelines, priorities and required resources have as yet to be identified. In order to avoid having a well-conceived if ambitious policy turn into yet another paper tiger, the ACC and key institutions for NACPS require professional support to facilitate the setting of priorities and sequences as well as the identification of feasible targets in line with capacities and available or expected resources. The unique momentum in the country, where the public will and demand for action against corruption is strong and where the President has shown political will and determination to go against corruption, even if in a selective manner, must not be lost or wasted.

## 4 Lessons learned from the policy design

The corruption crusade – chasing after a shadow?

President Mwanawasa has successfully positioned the fight against corruption high on the political agenda. He has also by and large managed to portray himself as an anti-corruption crusader.<sup>412</sup> There are a number of important anti-corruption initiatives, such as the Task Force, the new prevention policy, as well as the institutional strengthening of the Auditor General's office and the ACC. Nevertheless, when taking a broader political economy perspective, the situation might look less promising. The indications that President and government are not as keen on more accountability, transparency and integrity as they pretend to be need to be taken seriously (see section 3.2). The fact that the ACC is still allowed to be weak and that at the same time the Office of the President makes the ACC responsible for slow progress in the policy approval process instead of pushing it forward can itself be read as a lack of consistent highest-level political will. The selective approach to pursuing corruption investigations in the present government also raises many questions. Only time will show whether words and verbal commitments will be followed by deeds or the Zambian anti-corruption crusade is chasing shadows.

A punitive big bang to crack down on the previous government does not prevent bad apples from rotting the basket – a parallel prevention drive is crucial

Setting up the anti-corruption Task Force with an explicit time-bound mandate, concentrating on frying the big fish and securing significant support from development partners was an astute move on the part of the President to show “results”, although the way to relative success was full of

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<sup>412</sup> Virtually all interviewed key interviewees stated that “political will” existed, especially with the President.

rocks.<sup>413</sup> Taking on public officials who are no longer in office was a good entry point, as they do not enjoy strong protection from party and government networks anymore. But the ACC, the public and development partners have started to realise that such an approach will not stop bad apples from further rotting the basket. It seems to be late as the credibility of the government's anti-corruption commitment is suffering from setbacks and there is no doubt that it would have been desirable to complement the sanction-oriented approach with a sustained commitment to prevention from the start. Nevertheless, the momentum for anti-corruption work created by public demand and the promise of NACPS provides a good opportunity to bring prevention and prosecution policies together. Non-governmental actors such as the press, civil society and development partners have an important role to play in this endeavour.

Orderly, well-planned and nationally-owned strategy development created broad support

The NACPS drafting process provides a good example of the orderly, well-planned, nationally owned and information-based development of an anti-corruption policy. The careful preparation of NACPS through the preceding Governance Baseline Survey and the analysis of other governance reforms allowed the creation of important building blocks for the first draft. Broad consultations have generated widespread support for the policy, which the ACC now has to capitalise upon. Particularly interesting was the inclusion of the House of Chiefs in the consultations on NACPS as traditional leaders continue to play a role in Zambian society. Also, discussions about the gift-giving culture as a core traditional value and the increasingly blurred lines between it and corrupt practices aimed at unduly influencing chiefs in the administration of land helped create awareness about the issue and led to a consensus on how to deal with it.<sup>414</sup>

High-level institutional leadership helps ensure political weight behind the policy

As the responsible agency for the development of NACPS, the ACC realised from the outset the need to involve the highest level of government in order to carry forward such a complex and sensitive policy. Hence, the Cabinet Office was sought and found as a strategic ally. Both institutions together spearheaded the policy development process, including the countrywide consultations. Both institutions together will also be responsible for the implementation and monitoring. This combination of political strength and technical mandate is a promising prospect for putting NACPS into practice, although the risk is high that the honeymoon may be over when different vested interests have to be addressed.

Strengthening of non-state actors was the right bet

Civil society organisations, the Auditor General's Office, the Public Accounts Committee (PAC), more recently private sector organisations and, of course, the privately-owned media played a vital role in spurring and keeping up anti-corruption demand from outside the government. Development partners, in turn, get credit for the indispensable financial and technical support they provided in a timely and consistent manner to most of these actors.<sup>415</sup> It has been widely argued by the

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<sup>413</sup> The usefulness and cost-effectiveness of the Task Force has been questioned more than once by different actors. Its operating costs are high, it has been criticised for a lack of results (which is partly due to the fact that investigations and prosecutions are highly complex and challenging for the staff), and even the President threatened to terminate it. See evaluation report by ACG (2007) for more details on the Task Force.

<sup>414</sup> It was agreed that the House of Chiefs would, through deliberation, establish a threshold for the value of traditional gift-giving in order to distinguish this socially accepted practice from undue corrupting influences (workshop proceedings).

<sup>415</sup> E.g. the multi-year basket fund for TI-Zambia has allowed it to develop good advocacy and research capacities. The Auditor and PAC, strengthened through PEMFAR and a parliamentary development programme, could not have developed their voices without the support of the DPs. And more recently the activities of the Zambian Business Forum within this group of actors were further strengthened through the MCA Threshold Project.

interviewees for this study that a continuing anti-corruption push from outside the government is essential to bringing about concrete action and change.

Important to pick winnable battles, but technocratic solutions at the periphery do not address the problems at the political core

The primary focus of NACPS on corruption affecting the quality of service delivery is a good policy option, in particular since priorities have been selected on the basis of the National Baseline Survey and because service delivery is where citizens suffer most directly from the consequences of corruption. Also, corrupt practices at lower administrative levels may be “easier” entry points to start with and show quick results, as happened in streamlining immigration processes and making them more transparent. However, caution is needed for several reasons. Firstly, initial enthusiasm for administrative change has started to fade in some of the eight pilot institutions, partly because the expected benefits are lower than the “costs”, e.g. rent-seeking.<sup>416</sup> Secondly, the focus on opportunities for corrupt behaviour at the low-earning side of the public service is likely to generate resistance if not accompanied by high-level leadership, in particular in a country where moral values still count. Finally, such technocratic solutions, despite their importance and capacity for creating traction, do not address the core political problems of Zambia’s governance system and may inadvertently help to cement political corruption and state capture further.

#### 4.1 Preliminary observations on the implementation of NACPS

A commendable attempt to complement other reforms strategically may run the risk of dilution – prioritisation and sequencing, clear mandates and interagency coordination are crucial

Efforts to focus NACPS on areas relevant to corruption prevention that have not been covered by other public administration projects are commendable. The implementation strategy and programmes will have to define how to put this conceptual approach into practice. Nevertheless, signs for concern are looming and point to the risk of dilution. First, the objective of rolling out anti-corruption plans and Integrity Committees to all public agencies threatens to do everything and nothing at the same time (experience from Tanzania should be carefully considered). The ACC does not seem to have the capacity to provide technical advice or even only monitor nationwide public agencies, and public agencies themselves have weak capacities and often vested interests. Continuing and targeted work with the eight pilot institutions is a good alternative to test the approach, generate lessons and create capacity for further expansion. Second, responsibility for the implementation of the NACPS is largely assigned to the ACC, although it does not have the mandate and attributes to take action in all of the areas. Its capacities are also already stretched. Third, links between NACPS and other governance reforms have not been clearly established in the provisions for implementation and what is more worrisome, relevant institutions do not have the awareness or understanding about the need to create these linkages.<sup>417</sup> The planned creation of an inter-agency coordination body under the leadership of the ACC is an important potential remedy.

“Unstoppable” public will to go against corruption could be stopped by disillusionment

There is no doubt that Zambia has a unique opportunity to convert the existent public demand and political will, even if the latter is ambivalent, into an unstoppable momentum to go against corruption. Even within the government there is discontent about the shameless plunder of state resources. Nevertheless, while expectations for reform and action are soaring, the political leadership is dragging its feet when it comes to institutional reform and the revamping of the

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<sup>416</sup> Concluded from testimony and observations that were given by interviewees in May 2007.

<sup>417</sup> Based on interviews with the ACC, the Tender Board, the PEMFAR project and others.

country's legal and political system. The danger of disillusionment and subsequent loss of trust and support for the government is real.

Leadership, communication and management of perceptions are crucial for the ACC to perform its role

The anti-corruption policy is a political document expressing the government's commitment to anti-corruption objectives; it enjoys widespread support and has generated expectations. The government has now to demonstrate that it is serious about delivering on its promises, which requires strong leadership by the Cabinet Office and the ACC in tandem, first to achieve final cabinet approval and second to develop a sequenced and prioritised implementation plan. The ACC in particular needs to develop a more outward-looking and proactive attitude, pressure the Cabinet Office for support and continue to prepare the basis for policy implementation. The ACC also has to manage expectations and perceptions from other public agencies and the public at large. Proactive communication about the status of the policy, activities already undertaken, and information about some first results are important instruments for sustaining internal government and public trust. Finally, in view of the insecure future of the Task Force and taking into consideration that a dysfunctional justice system will have limited capacity to impose sanctions for some while to come, the ACC has a good opportunity to develop a complementary and alternative approach to sanctions in order to help satisfy public demand. This could include administrative sanctions and fines as well as a greater focus on accountable management systems, possibly integrated with the work of the Integrity Committees, and the monitoring and communication of actions taken.

A lack of research capacity in public institutions impedes dynamic anti-corruption approaches

Systematic information and knowledge about corruption in Zambia is available at the aggregate national level through surveys and analytical work mainly produced through civil society organisations and research institutes, including the University of Zambia. However, the public and state institutions entrusted with the fight against corruption have little research capacity themselves, which leads to limitations on adjusting anti-corruption approaches to patterns and trends in corrupt practices or on taking corrective action. As said above, neither the ACC nor the TF have developed such research capacity. The Auditor General's Office has been strengthened recently but its capacity to discover not only specific weaknesses but also patterns and trends is still rather weak. In addition, for agency or sector-level anti-corruption action plans, the capacity of these agencies to understand specific corrupt practices occurring in their fields of authority need to be developed in order to design appropriate counter-measures. Finally, political parties have little capacity, if any, to do policy research and participate meaningfully in the development of anti-corruption initiatives at the legislative and policy level. In this context, development partners, civil society organisations and non-state research organisations have an important role to play in order to help build the requisite public sector research capacity.

Inadequate staffing and information exchange within development partners hinders timely policy advice on their own approaches

With few exceptions, development partners lack adequate human resources on the ground in order to provide sustained support and orientation to anti-corruption work which they are to support. Collectively, there was no senior expert with broad anti-corruption and governance experience who would have had the knowledge, technical and political expertise as well as time to i) provide continuing strategic advice on the approach and specific issues that should be taken up by the international agencies in their dialogue with the government; and ii) to assist the government in identifying priorities and giving NACPS implementation a strategic direction.<sup>418</sup> The fact that the

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<sup>418</sup> Governance advisors from DFID and USAID in particular seem to be exceptions.

Governance Sector Advisory Group covers broad areas of governance, without a specific focus or sub-group on corruption-related issues, has further complicated this situation. Development partners themselves felt that important opportunities to strengthen anti-corruption work through a more comprehensive and/or mainstreamed approach have been missed. This experience should be taken into account by DPs in their support for the development of an implementation strategy and plan as well as for putting the policy into practice.

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## Annex – Methodological approach for country case studies

Georgia, Indonesia, Nicaragua, Pakistan, Tanzania and Zambia

March 2007

### I. Background

The main goal of the case studies is to better understand how anti-corruption (AC) policies are designed and implemented in practice. The thrust of this work will focus on studying and analysing key elements of the processes of policy design and implementation. Thus, regarding the policy design phase, the policy environment, the policy content, the involvement of stakeholders and the process of policy making will be examined with a special focus on identifying drivers of change as well as factors that facilitate or put obstacles into the way of AC policy making. With respect to the policy implementation phase two crucial elements will be examined in an exploratory way as an in-depth assessment of implementation goes beyond the scope of this study. Hence, particular attention will be paid on how the coordination and accountability/responsibility lines between different implementing partners of complex AC policies work in practice as well as whether or not communication is used in order to communicate progress / results of the implementation, inform about coming reforms and maintain support with both public officials and the public at large.

Taking into account that international development partners have identified a series of key features that are recommended in prescriptive approaches (see below), many of which are based on assumed good practice, the above described analysis of the local AC policy making process will take them into consideration for both the formulation of guiding questions for the field work and in the analysis of lessons learned in order to explore whether or not these principles were followed.

The case studies will be carried out by a team of two consultants, one experienced local political analyst, academic or the like, and one experienced international policy analyst, advisor, or the like. All case studies will follow a similar approach. The national consultant will prepare the ground, collect relevant material (e.g. legal and policy documents, studies, background reports, assessments, other available data and relevant laws), prepare a preliminary background paper on the country's AC policy history and context. The national consultant will also identify the key stakeholders, produce a preliminary mapping of them, their background and interests and will help the international consultant to prepare the latter's country visit agenda. The international consultant will guide, where necessary, the national consultant in the latter's local research. Further the international consultant will carry out the interviews with key stakeholders of the process and produce the full final case study.

### II. Underlying assumptions

Relatively little is known about the actual policy making processes and dynamics at work when it comes to implementation. However, based on the insights from some studies that touch upon certain elements of these processes and based on initial discussions with experienced anti-corruption policy makers the following assumptions will be taken into account during the research.

- There seem to be potential tensions between some of the key features for effective AC strategies or policies
  - Strategic vision / sequencing ← versus → holistic / broad-based approach
  - Normative AC approaches ← versus → local conditions / attitudes
- Other key features are prone to “kidnappings”
  - Local ownership → donor agencies may steer / push the agenda behind the scenes
  - Participation → local elites may capture AC agenda for purely partisan purposes
- AC – reform is not sufficiently linked to broader governance reform nor does it build sufficiently on lessons from prior failures → risk of losing effectiveness, increasing public cynicism towards democratic consolidation, etc.
- Despite a growing body of research evidence that different types of anti-corruption strategies are needed for different governance / institutional environments, this does not seem to be sufficiently taken into consideration in policy design

### III. Main features identified for effective AC strategies / policies

#### *Design phase*

A series of international institutions – such as the World Bank, UNDP, and UNODC – has developed conceptual approaches and practical recommendations on how to design effective anti-corruption strategies / programmes / policies.

The following is a long list of the main features recommended for the development of effective anti-corruption strategies and policies. This study will not challenge the value of any of them nor will it attempt to weight their relative importance. Rather, accepting the intrinsic value of these features, they have been taken into consideration during the formulation of questions to guide the case studies (see Annex I) to complement other aspects of interest such as questions focusing on drivers for change, external facilitating factors or obstacles.

Summarizing the results of a first review of the different recommendations on how to design anti-corruption strategies, the following are among the key features that are generally highlighted for effective AC policy making and implementation:

- National / local ownership and political will / leadership (WB, UNDP, UNODC, TI)
- Tailoring to local realities / conditions / attitudes / beliefs --- no one-size fits it all solutions (WB, UNDP, TI)
- Knowledge and information base is crucial for quality policy design (diagnostics, data, assessment of political culture context analysis, etc.) (WB, UNODC, UNDP)
- Long-term vision with short- to medium term results targeted at key institutions / areas (WB, UNDP, UNODC)
- Holistic / comprehensive approach – integrated with other reforms (WB, UNDP, UNODC, TI)

- Sequencing, timing and selection of entry points – keep in mind to bolster credibility, tangible results and constituency strengthening (WB, UNDP, TI)
- Balance between prevention, sanction and education (UNDP, TI)
- Participation → broad coalitions / collective action (WB, UNDP, UNODC, TI)
- Transparent and non-partisan → politically neutral (UNODC, TI)
- Resources and expertise → short term measures and funded medium-term programmes that can dig deeper (WB, UNDP, TI)
- Donors should lead by example and focus on internal integrity / accountability (UNDP)
- Clear definition of mandates for different implementing institutions (UNDP)
- Communication → in particular about success stories (UNDP)
- Monitoring and evaluation, measurable (UNDP, UNODC, TI)

#### *Implementation phase*

Most of the above mentioned institutions have not put forward a similar clear set of recommendations for effective implementation (which seems to be in line with much less research, evaluation and understanding of the critical phase of AC policy implementation). Although a rigorous assessment of the effectiveness and sustainability of anti-corruption initiatives / policies is direly needed, this goes far beyond the possibilities of this study.

However, the study will explore four dimensions of implementation that have been mentioned in the literature as key components of effective policies:

- **Coordination:** Responsibility and accountability lines for the key institutions charged with AC reform implementation need to be in place and operational
- **Communication:** Aimed at informing the public at large and public officials about the goals and objectives of the AC reforms as well as progress, successes, champions, etc.
- **Resources:** To what extent have additional resources been identified and provided both technical and financial.
- **Monitoring:** Aimed at regularly assessing progress as well as impact of the measures contained in the AC policy documents.

#### IV. Guiding questions for case studies

The following set of questions is meant to be a guide to orient interviews and the review of documents for the case study elaboration. It is not expected that each and any of the questions will be answered. The local consultant will provide some first approximate answers to those questions that can be answered based on his or her knowledge of the country situation and the review of documents that s/he collects for the study. The in-depth answers to the guiding questions will be

elaborated by the international consultant based on his or her interviews with key stakeholders, the profound review of documents and taking into consideration the preliminary answers of the local consultant (see TOR for national and international consultant).

#### **A. Initiation of AC initiative(s):**

- Were there any specific catalysing factors for AC initiative(s) to be undertaken (i.e. scandals, political competition (elections), compliance with international AC standards, pressure from donors, civil society advocacy, etc.)?
- Who initiated the anti-corruption initiative(s)? Who was against them?
- What was the main purpose? (taking into account both public discourse and early technical documents)
- What was the role of the donor agencies in this phase?

#### **B. Design of AC initiative(s):**

##### *Environment*

- Were the AC initiative(s) linked to broader governance reform? If so, how?
- Has the government carried out an assessment to understand the main governance failures and reasons for them? If so, by whom was it done, on what exactly did it focus and was it easily available?
- Have there been prior AC initiatives? If so, were results / lessons learned taken into consideration?
- Has the government carried out an assessment to understand local attitudes towards corruption or local ethical values? Were local studies by other actors on these issues easily available?

##### *Content*

- What was the main objective of the AC initiative(s)? What was the long term vision to be achieved?
- Which kind of anti-corruption approach(es) was/were chosen, for what reason and by whom (main actor(s))?
- What was the scope of the AC initiative(s) (broad-based all-encompassing, sector oriented, international treaty related, etc)? Which areas were prioritized? Which entry points chosen? Were there preventive, punitive and educational measures? Was there a greater focus one of these areas, if so which and why?
- How were the AC initiatives linked to related governance reform (e.g. civil service reform, justice reform, etc. – were they reflected in PRSP where applicable and/or in other sector reform strategies, papers)?
- Which kind of analysis, data, studies were used to design the policy (anti-corruption perception surveys, National Integrity System studies or the like, analysis of political economy, etc.)? Which of them were useful? What kind of research was missing? (according to stakeholder interviews)
- Were local norms and traditions reflected in the AC initiatives? If so, how?
- Where several AC initiative(s) were supported by international development partners, did they share underlying assumptions/analyses about the nature of the problem?
- Was there a clear distribution of roles and responsibilities? Was a central coordinating agency/organ determined? If not, which inter-institutional coordination mechanism was established between the different AC policy implementing agents?
- Was a communication strategy or information campaign for the AC policy(ies) considered? Were responsibilities for it clearly defined? Were resources (financial and technical) allocated?

- Were resource needs (financial and technical expertise) for implementation determined? Was there a realistic assessment of costs?
- Were resources for the AC efforts clearly identified and committed (both government and donors)? Was the budget process smooth? If not, what were the problems (specific attention on relations between Executive and Parliament)?

#### *Stakeholder involvement*

- Which stakeholders were involved, which not, and how was their support achieved or their resistance dealt with?
- Which were the main players and what was their relative importance? What was the specific role of donors?
- What were the dynamics of cooperation or resistance of the different actors in the design of the AC policy? Was cooperation or resistance continuous? Which factors could explain the potential changes?
- Did the different stakeholders have a commonly analysis, understanding, consensus and suggested remedies on how to address corruption (special focus on donor approaches and suggestions)?
- Was there an understanding of the potential constituencies and resisting forces for the different reform components? How were they engaged?

#### *Process*

- Has there been a process for the policy design? If so, please describe.
- Was there a formal mechanism for stakeholder involvement? If so, describe.
- How did stakeholders interact with each other? Did they choose a cooperational or confrontational approach? Or different actors different approaches? Was there a mechanism to resolve conflicts between stakeholders, if so which?
- Which actors and which factors influenced the setting of priorities and the final decision making of any given AC approach (special emphasis to be given to understand the role of donors)?
- Were different AC policy options widely discussed, including the decision about a specialized agency/organ or an existing agency for coordination? If so, how was a political agreement / consensus achieved? What were the trade-offs?
- How did the political agenda setting occur? (this will mainly be answered by the international consultant through analysis of the interviews)

### **C. Implementation of AC initiatives:**

#### *Coordination*

- Are institutional managers held accountable for the results of the AC initiative(s)? How? Are there performance indicators? If so, which?
- How were the AC initiative(s) coordinated?
- How were the AC initiative(s) interlinked with other governance reforms or sector reform strategies, if at all?
- Which obstacles/constraints arose over the course of initial implementation? How were they dealt with?
- How were powerful opponent interests/stakeholders dealt with?
- Have there been any relevant coalitions to support implementation? If so which and among which kind of actors? Do they provide a basis for collective action? Do they have clearly defined interests? What holds them together? What drives them apart?
- Have any of these measures had a positive impact? If so what? What would the interviewed stakeholder do differently?

*Communication*

- Was corruption kept as priority on the policy agenda? If so, how? If not, why?
- Has the government carried out any activities / initiatives of AC policy dissemination to the broader public?
- Have local champions or successful AC methods / results been identified and publicized? In terms of prevention, detection and sanctions (administrative and criminal)? If so, how?
- Is anti-corruption work linked in the social communication of the government to the objectives of broader governance reform (political and economic)? If so, how?
- Which means are used to communicate the content, progress and results of AC policies?
- Who is responsible for the production and dissemination of information on AC-initiatives?
- What effect has the communication generated or the omission of it?

*Resources*

- Were activities for AC policies costed?
- What are the funding resources and where do they come from?
- How were the AC policies linked with the political budgeting process? Who/which institution(s) negotiated AC budgets? How did the Executive interact with Parliament, in particular if the latter has an important say in yearly budget approvals?

*Monitoring*

- Was a monitoring system put in place? What information was used to establish baseline indicators?
- Who participated in the monitoring activities? How was the resulting information communicated?

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Fighting corruption is a challenge in any context, because corruption has many faces and can occur in different forms across all sectors and institutions of a country. The UN Convention against Corruption (UNCAC) recognises this and calls, among others, for “effective, coordinated anti-corruption policies” (Article 5) to address the problem strategically. This report explores what form such an approach could take, and examines in depth how national anti-corruption policies or strategies have come into being in six countries: Georgia, Indonesia, Nicaragua, Pakistan, Tanzania and Zambia. From a public policy perspective the authors look specifically at the catalysts and driving forces, how reforms were selected, prioritised and implemented, and finally, what role development partners played in the overall process.

The country studies show that the political response to perceived widespread corruption in those countries often consisted in the development of a broad national anti-corruption policy or strategy. Nevertheless, this approach has not been overly successful for a variety of reasons, ranging from unrealistic planning and the lack of prioritising reforms, to serious shortcomings in the implementation arrangements, and the absence of vital political agreements for effective reforms.

The report argues that explicit anti-corruption policies and strategies are not necessarily the most suitable and certainly not the only way to implement Article 5 of UNCAC, and goes on to discuss other options for coordinated anti-corruption policies. The report also points to the need of pursuing anti-corruption work with effective and modest targets instead of ambitious but unfeasible promises.