

## Criteria for appointing executives of anti-corruption agencies

### Query:

*The new Yemeni Anti-Corruption Law defines the criteria that the Shura Council should consider when nominating candidates for the Board of Trustees of the new proposed Anti-Corruption Authority. The Shura will submit its list to Parliament, which will then select 11 individuals to serve on the Board. As stated in Article 12 a), the Authority will have an executive body (employees) under the lead of a Secretary General, with tasks and selection criteria still to be defined in the Authority's constitution.*

*Based on evaluated experiences with the establishment of Anti-Corruption Agencies in other countries, are the criteria provided in the Anti-Corruption Law, for the nomination of candidates, sufficient to guarantee that the most competent persons will be selected or are there other important criteria which should be considered? "*

### Purpose:

Currently, after the recent approval of the Anti-Corruption Law by Parliament, there is a broad discussion about the selection criteria for the Board of Trustees. People fear that the wrong people could be listed to become members of the Board of Trustees. U4 advice would be tabled to the relevant authorities in Yemen for consideration.

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### Part 1: Outline of the Criteria for Selecting Appointees to the Proposed Yemen Anti-Corruption Authority

The challenge of making executive appointments to anti-corruption agencies (ACAs) is to ensure that persons of integrity are selected and that they enjoy independence from political (and private sector) interference as well as being held to account for their actions. Some authors on this subject have suggested that one can consider criteria for executive appointments to ACAs much in the way one considers the appointment criteria of high court judges (see J. Pope and F. Vogl "Making Anti-Corruption commissions More Effective": <http://www.imf.org/external/pubs/ft/fandd/2000/06/pope.htm>). Non-executive staff should also be subject to specific criteria regarding their integrity, experience and employee status. The criteria for the appointment of both executive and non-executive staff will be discussed in this U4 expert Answer.

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**Date:**

31 January, 2007

Whilst the criteria for appointments are important and are the focus here, attention should also be paid to both the measures to ensure the independence of the appointees as well as the accountability mechanisms in place to scrutinise and uphold the integrity of those who hold such positions.

We begin this U4 Expert Answer by setting out the criteria devised by the Yemeni Anti-Corruption Law for selecting members of the proposed Anti-Corruption Authority's Board of Trustees. In part 2 we outline criteria used by ACAs in other countries and in part 3 we offer an analysis of the strengths and weaknesses of the proposed Yemeni criteria based on the international experience discussed in Part 2.

The Yemen Anti-corruption Law No 39 (2006) sets out the details of the selection criteria for the Board of Trustees for the proposed Anti-Corruption Authority. The 11-member Board will manage the Authority. The Law states that the trustees will be elected from **independent, qualified nationals** who have proven experience and integrity. The Board should also include **representatives from civil society organizations, the private sector and should be balanced in terms of gender.**

Specifically the selected candidates should be of Yemeni nationality, be 40 years old or more, hold a university degree or higher and never have been a subject of corruption allegations or sentenced for corrupt acts or impugned for immoral or dishonest crimes, unless such allegations or sentences are proven to be false.

Each member of the Board will have rights equivalent to those of a minister in the administrative system of the state. Members of the Board must submit their financial disclosure information to a committee in the parliament. The members must also swear a constitutional oath before embarking on their duties. Board members' terms will last for five years from the day following the appointment, This period is not renewable.

A Member will not be dismissed from his/her position unless he or she commits a grave violation of duties and regulations of the Authority, and a court has ruled on the allegations.

## **Part 2: Selection Criteria Used by other Anti-Corruption Agencies**

### ***Criteria for appointing Executive Staff/Heads of Agencies/Boards of Trustees***

From the outset, the shape and independence of an Agency or Commission (however styled) may well be determined by how the officeholder is appointed or removed. If the appointing mechanism requires consensus support for an appointee from Parliament, rather than the Executive, and an accountability mechanism exists to monitor performance (e.g., a Parliamentary Select Committee on which all major parties are represented), the space for abuse or non-partisan activities can be minimised.

A flaw in many legislative schemes involves giving a President (or any political figure) too much control over the appointment and operations of an Anti-Corruption Agency. This could place the President in the impossible position of deciding whether or not to prosecute close

political colleagues. For example, Tanzania's legislation provides that all reports be forwarded to the President in confidence, and, as a consequence, the effectiveness of Tanzania's ACA has been hampered.

It is therefore important that the appointment procedure be one which recognises that the task of the office holder will be to maintain a check on the Executive and, in particular, the political party in power. If the Executive or even the ruling party have a free hand in making the appointment, this will damage practical effectiveness and public confidence. At best, appointees would risk being seen as hand-picked supporters who could be relied upon not to rock the boat. At worst, they would be seen as the party's "hatchet men".

It follows that the appointment procedure must be one which involves a broader cast of actors than those presently in power. The precise appointment procedure will vary from country to country, but it must be insulated from political interference so that people of integrity are likely to be selected, and protected while in office. The office-holder should also be afforded the same rights of tenure of office as those enjoyed by a superior court judge. Removal from office should never be at the discretion of the powers that be, but only in accordance with a prescribed and open procedure, and only on the grounds of incompetence or misbehaviour. For further information please see the TI Source Book:

<http://www1.transparency.org/sourcebook/11.pdf> )

### ***Non-Executive Staff***

It is generally considered important for an ACA to have its own, dedicated non-executive staff, although recommendations concerning their number vary depending on the scope of operations. Size can range from over 1,300 staff in Hong Kong to around 100 in Botswana and New South Wales.

Not all agencies recruit civil servants only; for example, the majority of the Hong Kong ICAC's officers are on contract, while Botswana's DCEC recruits its staff through the Public Service Management department without, however, giving it proper civil servant status. Comparative analysis of ACAs suggests that more important than the status of an ACA's personnel in determining the probability of success or failure are:

- **Integrity.** Integrity of staff is crucial to the credibility and effectiveness of an ACA. Staff members at all levels should therefore undergo some form of integrity checks, to minimise the risk of staff undermining the agency's role in curbing corruption. Some agencies even have its own internal oversight body to investigate breaches of its code of conduct, or a body that monitors and reviews all complaints held against the ACA.
- **Regulation of appointments and dismissals.** The regulation of appointments and dismissals by the ACA of its non-executive staff without the interference of third parties is an important asset which helps determine the quality of personnel - since managers will be able to dismiss staff if they fail to live up to professional and/or moral expectations - and works in favour of the agency's independence, since it acts as a safeguard against undue influence over appointments by the political elite, as well as a protection of officers from political, economic or personal interference and pressures.

- **Expertise and continuous training** are essential if the highest professional standard of an ACA is to be maintained.
- **Adequate salary levels** are necessary to keep up staff morale and to act as a disincentive to engagement in corrupt activities.

Secondments can be a positive asset to an ACA, and have been successfully used by ACAs that are perceived to be effective. Examples include Botswana's DCEC, which was originally staffed with a combination of officers seconded from the country's other law-enforcement agencies, like the police and customs, and expatriate experts. Both Zambia's and Malawi's ACAs are said to have greatly profited from the secondment of expatriate expert respectively, and Singapore's CPIB is headed by a director seconded from the police after originally relying heavily on staff secondments from Singapore's national police force.

However, when Botswana stopped secondments to the DCEC in 2001, senior positions previously held by expatriates proved difficult to fill due to a lack of domestic expertise.

In sum, it appears that secondments can be successfully employed in the context of ACAs, provided that the same conditions and safeguards apply to seconded personnel as they do to regular staff. Secondments present the advantage of institutional flexibility, and facilitate the exchange of specialist knowledge and expertise, which can be a huge advantage given the complexities of the corrupt phenomenon. It is, however, crucial to ensure that, in particular where international secondments are used, this does not work against the building and sustainability of institutional expertise.

What follows are some specific examples of both executive and non-executive appointment criteria from Hong Kong and Vietnam.

### **Hong Kong**

Since 1974, the Hong Kong Independent Commission Against Corruption (ICAC) has enjoyed resounding success in fighting corruption. Employment contracts for ICAC staff members are independent of civil service rules and made on the basis of mutual consent. Officers join the ICAC through a special examination and cannot enter the Hong Kong government after they leave the Commission. The agency benefits from low turnover; over half of its officers have been with the ICAC for over 10 years, and a stable employee base has contributed to the development of internal expertise in fighting corruption.

The ICAC's reporting hierarchy includes the Special Regional Administrator, the ICAC Director, and three oversight committees. The three committees are the Operations Review Committee, the Corruption Prevention Advisory Committee, and the Citizen Advisory Committee on Community Relations. Members are nominated in recognition of their distinguished reputations in the larger community and they meet at regular intervals to review the ICAC's activities and issue a report to the Hong Kong Special Administrator. These reports are published and disseminated on the internet.

### **Vietnam**

Vietnam has multiple anti-corruption agencies. The Government Inspectorate is designated the lead organisation in the fight against corruption.

The Government Inspectorate is an executive agency with national remit. The inspector general holds the rank of minister and is appointed by the president based on the recommendation of the prime minister and approval of the National Assembly. Chief inspectors of ministries are appointed by the prime minister in consultation with the relevant minister and the inspector general. The inspector general reports to the National Assembly and the prime minister.

The Government Inspectorate is divided into administrative and ministerial branches. Administrative inspectorates exist at the provincial and district levels, reporting to the People's Committee of the same level and the inspectorate office of the next higher level – in effect creating a situation in which people are responsible for inspecting their superiors. Ministerial inspectorates operate within ministries and report both to the minister and the Government Inspectorate. Elected People's Inspectorates at the commune level report to commune People's Committees but are subordinate to the Vietnam Fatherland Front.

The National Assembly allocates state budget funds to the Government Inspectorate. Appointments require specific educational and moral qualifications, and significant scope exists for nepotism. Off-the-books funds are readily available. As inspectors are public employees, the codes of conduct for civil servants apply. Inspectors are also prohibited from falsifying inspection reports.

No special provisions for handling internal or external complaints exist.

For further information please see "National Integrity Systems, Transparency International Country Report Vietnam" (2006) (Victoria Jennett may be contacted directly for this information: [vjennett@transparency.org](mailto:vjennett@transparency.org))

### **Part 3: Assessment of Yemeni Criteria in Light of International Practice**

The Yemeni process for appointing the Board of Trustees of the Anti-Corruption Authority has many positive features. It is prudent that parliament ultimately elects the Board and that there will be cross-party consensus on the appointees. It is also prudent that the pool of candidates comes from different sections of society and attention is paid to gender balance. The greater the diversity in the professional experience and political persuasion of the Board, the greater is the likelihood that the Anti-Corruption Authority will be active as an independent voice in society, regardless of the actors in power.

Since it is good practice that candidates have distinguished professional records it is likely that the over-40 age requirement will be naturally met. Integrity checks should be made on candidates' backgrounds. Candidates should be asked to declare their assets, interests and also their relationships (business, familial or personal) with political actors, business and other sectoral actors, so that parliamentarians are fully apprised of candidates' backgrounds before they elect the 11 Board of Trustees.

The Yemeni model does not afford appointees the same kind of tenure as judges, yet it limits to one the number of terms that appointees can serve. This may have the effect of enabling the appointees to act independently whilst in office as well as insulating them from political interference. However the quality of this protection is weaker than that of judicial tenureship since Board of Trustees members may feel that they operate under the threat that if they act

too independently, on leaving office they will never again be eligible for political appointments.

#### **Part 4: Further reading**

John R. Heilbrunn "Anti-Corruption Commissions Panacea or Real Medicine to Fight Corruption?"

<http://siteresources.worldbank.org/WBI/Resources/wbi37234Heilbrunn.pdf>

UNDP, "Institutional Arrangements to Combat Corruption: A Comparative Study":

<http://www.u4.no/document/literature.cfm?id=92&key=27>