



International Development Law Organization  
Organisation Internationale de Droit du Développement

*Headquarters*  
Via di San Sebastianello, 16  
00187 Rome, Italy  
Tel: (39) 06 69 79 261  
Fax: (39) 06 678 1946  
Email: idlo@idlo.int  
Website: www.idlo.int

*Distance Learning & Research Center*  
Via Sebastiano Veniero, 1/A  
00192 Rome, Italy  
Tel: (39) 06 39746177  
Fax: (39) 06 678 1946  
Email: dlrc@idlo.int

*Asia Pacific Training Center*  
Glebe Court House, 2 Talfourd Str.  
Glebe NSW 2037, Sydney, Australia  
Tel: (61 2) 8585 6700  
Fax: (61 2) 8585 6767  
Email: aptclDLO@idlo.int

*Afghanistan Project Office*  
In front of Junction 2  
Charah-i-Shar Pour  
Kabul, Afghanistan  
Tel: (93) 70288074  
Email: afghanistanIDLO@idlo.int

*Ibrahim Shihata Regional Center*  
World Trade Center  
119 El Corniche El Nil  
Boulac, Cairo, Egypt  
Tel: (20 2) 5784840 Ext. 221  
Fax: (20 2) 578 4847

*IDLO's mandate is to strengthen the rule of law and good governance in developing countries and countries in transition in order to provide security for the individual and to reduce poverty by protecting individual rights and economic activity and by strengthening judicial and local institutions to promote a viable legal framework for commerce, trade and investment. IDLO accomplishes this by training, technical assistance, research, publication, and collection and dissemination of relevant information and documentation.*

## REPORT

by

The International Development Law Organization (IDLO)

to

The Italian Ministry of Foreign Affairs

on

Anti-Corruption

June 2005

## Acronyms

---

ACC	Anti-corruption Commission
ADB	Asian Development Bank
ADR	Alternative Dispute Resolution
APRM	African Peer Review Mechanism
AU	African Union
AusAID	Australian Agency for International Development
COCA	Central Organization for Control and Auditing
CFJ	Centre de Formation Judiciaire
CIDA	Canadian International Development Agency
DFID	United Kingdom Department for International Development
DLRC	Distance Learning and Research Center
DLU	Development Law Update
DU	Documentation Unit
EITI	Extractive Industries Transparency Initiative
EU	European Union
FIDIC	International Federation of Consulting Engineers
GDLN	Global Development Learning Network
GRECO	Group of States against Corruption
GTZ	Deutsche Gesellschaft für Technische Zusammenarbeit
IACC	International AntiCorruption Conferences
IBRD	International Bank for Reconstruction and Development
ICMM	International Council on Mining and Metals
IDLO	International Development Law Organization
ISISC	International Institution of Higher Studies in Criminal Sciences
MENA	Middle East-North Africa Region
NEPAD	New Partnership for Africa's Development
NGO	Non Governmental Organization
NORAD	Norwegian Agency for Development Cooperation
OECD	Organisation for Economic Co-operation and Development
OAS	Organization of American States
PACI	Partnering Against Corruption Initiative
PEFA	Public Expenditure and Financial Accountability
REN-LAC	Reseau National de Lutte Anti-corruption
SADC	Southern African Development Community
UNDP	United Nations Development Programme
UNODC	United Nations Office on Drugs and Crime
USAID	United States Agency for International Development
US-GAO	United States-General Accounting Office
VDJ	Voices of Development Jurists
WB	World Bank
WTO	World Trade Organization

## Table of Contents

---

	<b>Page</b>
<b>Introduction</b>	<b>1</b>
<b>I. Relevant experience and lessons in anticorruption efforts and policy trends</b>	<b>2</b>
A. Donor financed rule of law promotion	2
1) Methodological issues	2
2) Local demand	2
3) Beyond Legal Transplantation	3
4) Other lessons	3
B. Capacity Development/ Building	4
1) Definition and complexity of capacity development	4
2) Integration with the local setting and political considerations	5
3) Long-term commitment	5
4) Ownership and training	6
5) A different understanding of capacity: the organizational capabilities approach	7
6) Alternative approaches to capacity development	8
C. Policy trends and current initiatives	9
1) The Multi-Pronged Approach	9
2) Current initiatives	10
D. Lessons learned from donors' experience	14
<b>II. The effective implementation of international conventions: How to enhance international cooperation on anti-corruption</b>	<b>19</b>
A. Implementation of international conventions	19
1) Current intergovernmental anticorruption instruments and initiatives	19
a) Major legal instruments	19
b) Other international governmental initiatives	19
c) Other international initiatives and fora	19
d) Global guidelines for businesses and sector initiatives	19
2) Promotion of ratification, implementation and monitoring of anti-corruption conventions	20
3) Enforcement of OECD convention	22
B. Building and evaluating monitoring mechanisms	22
1) Monitoring and peer review mechanisms	23
a) The concept of peer review	23
b) Peer pressure	24
c) The functions of peer review	24
d) Effectiveness and challenges of monitoring and peer review	25

	<b>Page</b>
2) Analysis of relevant anti-corruption monitoring and peer review mechanisms	26
a) OECD Convention	26
b) The African Peer Review Mechanism (APRM) of the NEPAD	27
c) The Group of States against Corruption (GRECO)	28
d) United Nations Convention	28
e) African Union Convention	29
3) Conclusions	29
a) Donor support to monitoring mechanisms	29
b) The link between NEPAD APRM and the implementation of UN and AU Conventions	30
<b>III. Building institutional state reform and targeting civil society and business sector</b>	<b>31</b>
A. Technical assistance and capacity building for institutional reform	31
1) Budget controls and financial management	31
2) Procurement	31
3) Political party funding and electoral process	31
4) Asset recovery	32
5) Access to information	32
6) Regulation of private sector	32
7) Enhancement of rule of law and judicial reform	33
B. Targeted support for civil society and the business sector	33
<b>IV. Plan of Actions</b>	<b>36</b>
A. Implementation of UN, AU and OECD Conventions	36
B. Building Institutional State Reform and Targeted Support to Civil Society and Business Sector	37

## Introduction

---

Following a series of contacts between the competent offices of the Italian Ministry of Foreign Affairs and IDLO, the latter has conducted an in-depth study of the causes of corruption and its negative effects on economic, social and cultural development of emerging countries.

The above study has been effected taken into account the priorities formulated by the Group of Eight to address corruption.

The research, analysis and investigation of the existing legal and scientific material have been implemented with the valuable contribution of a group of international experts, the International Expert Group Meeting (IEGM), convened at a meeting in Cairo from 18 to 20 April 2005, thanks also to the support and assistance of UNDP Regional Office of Cairo.

Based on the above, a plan of action has been drafted which includes concrete initiatives and projects for submission to the attention of the international community, plan of action outlined under part VI of the Report.

IDLO wishes to express its gratitude and appreciation to the Coordinator of this initiative, Ambassador Ugo Leone, IDLO Diplomatic Counsellor, to the Authors of the Report, Avv. Andrea Lo Gaglio (Italy) and Mr. Thomas F. Mc Inerney (USA), IDLO General Counsel as well as to the international experts who attended the IEGM.

The Director General  
William T. Loris

## I. RELEVANT EXPERIENCE AND LESSONS IN ANTICORRUPTION EFFORTS AND POLICY TRENDS

---

To understand the possibilities for strengthening the fight against corruption, it is essential to assess the effectiveness of international efforts to support the rule of law, principally an outgrowth of international development programs. Despite a proliferation of work in rule of law and anti-corruption in recent years, evaluations of the effectiveness of these activities are few. Recognizing this gap in knowledge, the donor community has begun taking stock of the effectiveness of rule of law promotion generally, and anti-corruption specifically. Because of the centrality of human capabilities to these questions, additional work has been done to understand what makes for successful capacity building programs. Both inquiries are relevant to determine the prospects for the success of anti-corruption efforts, particularly those financed by the international community.

### A. Donor financed rule of law promotion

#### 1) Methodological issues

Analyses of law and development programs have identified some necessary elements. Of course, work on law and institutional reform does not lend itself to blanket or one size fits all solutions. What works in one context may not work in another. While this point is certainly valid, what follows are elements that will have a bearing on the effectiveness of activities in most contexts.

#### 2) Local Demand

Reform of legal or administrative systems challenges existing social, political and economic arrangements. Any effective program of law or anti-corruption reform will involve changes to existing practice. Before these sometimes-difficult steps can be taken, experience has shown that where demand is too weak or resistance too strong, reform programs should be preceded by efforts to build demand. Support for NGOs or professional groups that attempt to build political backing for reform are two approaches. Tools used in building such support include pilot activities, training, or regional exchanges.

Contrary to the understanding that demand must precede reform, there is some evidence to suggest that political support may arise as an outcome of donor-sponsored reform. According to one analysis of US-sponsored justice sector reform in Latin America, support developed as implementation unfolded.<sup>1</sup> The lack of high level political support at the outset of the program appears to have been a strategic plus in some programs as implementation was able to begin without encountering political opposition. Whether reforms require support of the general public or can occur with elite or bureaucratic backing will depend on the extent to which reforms may disadvantage elites. In such cases, support of the general public may be essential to accomplishing a particular reform.

Similarly,<sup>2</sup> according to one paper on law and justice reform, three factors contribute to success.

- The first indicator is the support from political elites, which may be substituted by interested constituencies disposed to reform.
- The second is the country's autonomy from the political system (reformist efforts are unlikely to yield results if the executive branch, the military or the police can manipulate the judiciary).
- The third is the degree of judicial corruption and the existence of basic standards of human rights.

*Case study of constituency and coalition building:* Often officials in beneficiary states initially seem keen on undertaking democratic and structural reforms, only to reveal in a later that they have little political will to change. When this occurs the donor's program may need to adapt and switch to constituency building. In the Philippines, in the late 1980's and early

---

<sup>1</sup> GAO report on Latin America justice reform

<sup>2</sup> USAID Program and Operations Assessment Report No.7 (1990).

1990's when the Asia and Ford Foundations realized that the legal strengthening activities were not generating significant changes, they decided to invest in constituency building through: (i) enhanced legal reporting to make the justice systems more transparent to the citizens; (ii) elite advocacy NGO's to publicly monitor the court system; (iii) help in enforcing a provision which consented to NGO representation in municipal bodies and (iv) public opinion surveys to provide empirical evidence of low public esteem for the judicial system.

### 3) Beyond Legal Transplantation

There is growing awareness among those working in the legal and institutional reform field that reform must bear some relation to the existing society by building on existing law and institutions. Assistance to developing countries in the drafting of these laws requires, as confirmed by World Bank and Swedish cooperation experience, that foreign laws not be "tout court" transplanted in to the developing country as the new law may never be applied. Laws that are not understood and that are inconsistent with the existing legal culture are likely not to be respected or enforced; laws in fact must reflect the economic, social and cultural environment of that country; they must simultaneously incorporate world-class best practices and be tailored to the particular country. It is useful to present different solutions that can be found internationally and discuss how compatible each is to the country's own system, their advantages and disadvantages.<sup>3</sup> Donor contributions should be of a "catalyst nature", in the sense of stimulating the country's own resources. When studying and preparing legal reforms, an important aspect is also that of considering how the proposed changes can be rooted in society, so that their legitimacy increases and they survive personnel changes and power shifts.

*Case study: Judiciary reform in Latin America.* A U.S. GAO report on Judicial reform in Latin America (El Salvador, Honduras, Guatemala and Costa Rica) identifies several lessons that can be learned from the experiences U.S. agencies have had in implementing judicial reform programs in the Latin American region. It recommends that when addressing large programs, the government, where appropriate, should (i) ensure that host countries are receptive to change before initiating large programs, judicial reform in fact hasn't engendered the desired progress because of this lack of willingness, and (ii) address political and institutional obstacles along with addressing technical problems. According to USAID, its initial inexperience in the politically sensitive and complex area of judicial reform led USAID to focus first on technical improvements to the judicial systems, such as case tracking and computerizing case management systems, rather than on political and systemic obstacles to reform.

### 4) Other lessons

*Regional approach.* According to a study by CIDA, there are strong arguments for taking a regional approach to law and justice reform rather than a bilateral approach. Regional programming may be viewed with less suspicion by target governments, allowing for more forceful initiatives, particularly those aimed at attitudinal change. Secondly regional programming can take advantage of regional resources and horizontal sharing of information and lessons learned.

*Long-term planning.* Legal development cooperation, as seen from various donors' perspectives, should be long-term. Assistance to democracy and human rights requires great trust between donors and recipients, and such trust needs time to build up.

*Performance indicators and evaluation mechanisms* should allow long-term objective evaluations of the progress, impact and outcome of legal and judicial reforms. In final analysis, performance indicators should be based essentially on the evaluation of the extent to which the protection of citizens and peoples' rights have improved, as a result of the aid received, and not, for example on quantitative measures (number of judges trained, number of cases processed etc.). Performance indicators allow monitoring projects, encouraging critical reflection and permitting adjustments that can enhance impact. Project monitoring and evaluation mechanisms are necessary not only for the successful execution of individual projects, but also for developing data and learning regarding the process of legal and justice

---

<sup>3</sup> SIDA report.

reform. Conclusions of field studies and evaluations to date tend to be too general to be useful to staff working on project design.

*Transparency.* One study noted how information on the reform process and on all aspects of donor assistance should be readily accessible to the public; some donors in fact do not make enough information available about their work.<sup>4</sup>

## **B. Capacity Development / Building**

### 1) Definition and complexity of capacity development

For the purposes of this paper, the definition developed by UNDP seems most appropriate. This definition holds that “*capacity is the ability of people, institutions and societies to perform functions, solve problems and achieve objectives, and that capacity development is the process through which capacity is conserved, created, strengthened, adapted and maintained over time*” (UNDP 2002, as quoted in OECD 2004, 5).

The complexity of capacity development demands an integrated, contextual approach. Yet it is very difficult to structure a clear, concise strategy for capacity development when nearly every piece of literature points out that due to its complex nature there is no one right way to do it, or anything even close.<sup>5</sup> Peter Morgan, an authority on the subject, wrote: “*To make progress, participants need to ‘grope along’, to experiment, take risks, be flexible and be open to new learning*” (1997, 19). Despite the complexity, it is still possible to draw out some *good* practices rather than *best* practices (Lopes and Theisohn 2003, 2). There are several suggestions in the literature on how agencies can do capacity development better.

A successful development response tends to bring national agents, local communities, academia, the private sector, and external partners together and devises tailored responses that take the uniqueness of each situation into account (Lopes and Theisohn 2003, 2). Such a response reflects the contextual approach referred to above and incorporates different sectors in order to address the complexity of capacity development. An approach that does not recognize or does not deal with this complexity is highly criticized (Boesen 2004, 4; Manila 2003: iii, 11). The complexity of capacity development mainly derives from the interplay between the three different actors involved: the individual, society, and organizations/institutions.<sup>6</sup>

#### Individual Level

- Education
- On-the-job training
- Formal and informal skills to accomplish tasks and solve problems

#### Society Level

- Formal and informal: values, norms, and power relationships
- Source of: consensus, conflict, sense of trust; corruption

#### Organization/Institution Level

- Development policies and plans
- Legal frameworks
- Public sector policies and incentives
- Human resource policies and incentives
- Provides framework in which individual capacities connect and achieve goals beyond the capacity of one individual or a few people

All three levels are equally important, mutually interdependent, and need to be developed (Lopes and Theisohn 2003, 24; Manila 2003, 13). It is vitally important to avoid an isolated approach that does not take into account “*the influence of, or their impact on the other levels*”

---

<sup>4</sup> Human Rights Report

<sup>5</sup> See Boesen 2004, 6; Manila 2003, 11; Carlos Lopes and Thomas Theisohn, *Ownership Leadership and Transformation: Can we do better for capacity development* 17 (2003).

<sup>6</sup> See UNDP 1997: 2,5,8; UNDP 1999; Morgan 2002, 17; GTZ 2003, 4; Lopes and Theisohn 2003: 1,24; OECD 2004: 5,7.

(Manila 2003, 14). This does not require an agency to address each level, only to recognize how they interact and how this affects the level in which a capacity development project/program will be involved.

In order to effectively filter through the complexity of capacity development, an agency must fine-tune its strategy. Before implementing a development project/program, an agency must first *clearly* identify the goals, priorities, and capacities to be developed and the strategy to meet them (UNDP 1997, 4). General statements must be avoided. To adapt the same point made through a different example, this is a goal “*but it says little, if anything, about the capacities that are needed to carry out such a mandate*” (Morgan 1997, 15). Although pinpointing specific capacities remains elusive (Lopes and Theisohn 2003, 4), the task is worthwhile. One example is the United Nations Development Programme’s (UNDP) list for good governance that defines, in one sentence each, the elements that it sees as most important.<sup>7</sup>

## 2) Integration with the local settings and political considerations

(i) As if the complexity of capacity development is not demanding enough, it is also important to avoid its biggest flaws. It is widely recognized that working with and strengthening existing institutions is better than creating new ones (UNDP 1999, 6; Lopes and Theisohn 2003, 9) and that facilitating the development and utilization of local capacities is also preferable to replacing them (Manila 2003, 11; UNDP 1997: 3,10). Replacing local capacities need not be intentional but can inadvertently result from an ineffective analytical process by which existing capacities are bypassed or ignored (OECD 2004, 8). Additionally, creating new structures instead of building upon existing ones diverts resources away from other sectors, which puts an unnecessary drain on the development process as a whole (Morgan 2002, 6). This requires agencies to integrate local mechanisms and to adapt to their priorities instead of creating multiple rules, procedures, and requirements (Lopes and Theisohn 2003, 7).

Projects are criticized for being inconsistent with sector policies or establishing parallel structures to expedite implementation because this undermines capacity development and national ownership (Manila 2003, iii; see also Lopes and Theisohn 2003, 80-83). There is general agreement on the need to align policies and programs around national priorities and processes,<sup>8</sup> but complete harmonization is not necessary (Manila 2003, 15). At the minimum, however, agencies need to make more of an effort to talk to one another and share information (Manila 2003, 15).

(ii) Politics have a considerable effect on capacity development. One article noted: “*Widely regarded as intangible, mindsets, vested interests and power differentials may make the biggest contribution to development success or failure*” (Lopes and Theisohn 2003, 5; see also 44-47). Within the context of capacity development, politics play out in the basic contest over scarce resources. In developing and transitional countries, capacity development becomes part of a zero sum game wherein resources are taken from one institution and given to another.<sup>9</sup> Given that the local government sets the agenda and priorities, the process is not only a struggle for scarce resources but over changes in the status quo, which is often challenged by those who are not benefactors (Morgan 1997: 7, 18). While this may seem obvious, one of the most obvious weaknesses in the present knowledge about capacity development is the lack of understanding about the politics of power and the power of politics (Lusthaus et.al., 1999 as cited in Boesen 2004, 6; see also OECD 2004, 7). There needs to be more research devoted to the problems that act as barriers to capacity development within these political systems, such as the challenges of dealing with patronage, rent-seeking, corruption, and their causes (Boesen 2004, 7).

## 3) Long-term commitment

An inherent difficulty of capacity development is the slow rate at which change occurs. The urgency and agency pressure for reform and the slow speed of development necessary for it to gain commitment and legitimacy makes a poor match (Hirschmann 1993 as cited in Boesen

<sup>7</sup> See UNDP 1997, 6.

<sup>8</sup> See UNDP 1997, 10; UNDP 1999: 6,10; Manila 2003, 15; OECD 2004, 9.

<sup>9</sup> See Hirschmann 1993 as cited in Boesen 2004, 7.

2004, 8). Capacity development must not be sacrificed for short-term gains even though the pressure to do so is sometimes overwhelming. Election pressures, political or financial imperatives coax countries into operating on a short-term horizon, which undercuts capacity development since it unfolds over the long-term (Lopes and Theisohn 2003: 1,3,22). On the other hand, agencies must stay engaged and not simply move on when the long-term agenda must begin (Lopes and Theisohn 2003, 10). The current setting, however, alleviates some of this pressure. The international community is committed to promoting development for at least the next 10 years because of the Millennium Development Goals. With this longer timeframe, it is easier to focus on long-term objectives and withstand the short-term pressures. Along with a long-term commitment and objectives, however, comes the necessary provisions for future funding that *must* be made. There are scores of examples within the history of development of appropriately established institutions that could not meet their potential, to say the least, because of the lack of subsequent resources (Lopes and Theisohn 2003, 80-81).

#### 4) Ownership and training

(i) The term ownership is often used but rarely understood. Indeed, it is the most difficult concept to grasp in capacity development. Since it is borrowed from law and used in a very subjective and abstract context, ownership is an often misleading term (Lopes and Theisohn 2003, 29). The International Symposium on Capacity Development and Aid Effectiveness convened by UNDP in Manila, with over 120 participants, debated the meaning of ownership after the term's confusion was brought up. They agreed that ownership is based upon strong leadership and political commitment and is necessary for achieving successful project outcomes (Manila 2003, 11), which does not clarify what the term actually means.

Common uses of the term ownership in this context include:<sup>10</sup>

- Ownership *of* the capacity development project/program process
- Owned *by* either the donors or the local governments/stakeholders
- Owned *through* being committed to the project/program, willing to or in the process of making relevant reforms, controlling the idea and/or process, or participating at a certain level of involvement

In a word, ownership is responsibility: responsibility for making decisions, implementing reforms, carrying out the necessary tasks, and anything that goes wrong.<sup>11</sup> Ownership is a concern because of the contention between the roles of donors and local governments/stakeholders. Whenever ownership was addressed in the literature it was to argue that the role of donors ought to foster, not erode local ownership. The reasons why varied.

Local ownership is promoted for the following reasons:<sup>12</sup>

- Ensures that the development project/program will continue after donors leave
- Lends credibility to the current and future projects/programs
- Promotes and develops good leadership
- Consistent with a demand-led approach that increases efficiency of development by clear mandates, accountability, and adequate funding
- Has the political commitment and broad support to introduce appropriate policy changes.

The overall benefit of local ownership is that it increases the likelihood the capacity development project/program will succeed. Agencies can create change only to the extent that they empower local processes (Manila 2003, 14); the less ownership the less likely successful development will occur (Lopes and Theisohn 2003, 31; see also Morgan 1997, 7).

---

<sup>10</sup> See UNDP 1997, 4; OECD 2004, 6; Lopes and Theisohn 2003, 2; UN University 2003 as quoted in Lopes and Theisohn 2003, 30.

<sup>11</sup> Lopes and Theisohn (2003, 30) put forth what they consider to be the four aspects of ownership:

- a) Ownership of ideas and strategies: voluntary, a choice made by a partner on a concept
- b) Ownership of processes: who took initiative, wrote the terms, designed the project, etc.
- c) Ownership of resources: the recipient being a big contributor to needed resources, this reflects commitment and sustainability
- d) Ownership of outcomes: strengthens accountability.

<sup>12</sup> See Morgan 2002, 17; Lopes and Theisohn 2003, 24; Manila 2003: ii, 11-12; OECD 2004, 6.

A parallel concern to ownership is broad-based local support. Whether it is because it increases civic engagement, local accountability, consensus among the population, or a sense of fairness, the value of including members of society cannot be overemphasized.<sup>13</sup> Although there are no blueprints for capacity development, one of the most prevalent factors in successful project/programs are the dual pressures for better governance from leaders at the top and citizens at the bottom (Brautigam 1996, as cited in Boesen 2004, 11).

(ii) In education or training projects/programs, knowledge acquisition is better than knowledge transfer. It is widely held that “*knowledge cannot be transferred. It has to be acquired, learned, and reinvented*” (Lopes and Theisoehn 2003, 4). The focus must be on developing tacit knowledge, such as ideas and information gained through experiential learning and exposure to different values and working systems, which plays an extremely important role in capacity development (Manila 2003, 17; see Appendix A).

One of the biggest concerns related to education and training is weak incentives. Where incentives are missing, there is the possibility that public sector trainees may find good reason to leave and find a job in a better area, specifically another country (Boesen 2004, 14).<sup>14</sup> This brain drain is an issue that requires urgent attention but has been “*seriously under-researched*” (Manila 2003, 12-13). Addressing the problem requires monitoring, evaluating, and responding to the emigration of the highly skilled, particularly in countries with weak talent pools (Lopes and Theisoehn 2003, 7). Negative incentives that encourage brain drain include low remuneration, skewed recruitment and promotion criteria, compression of salary differentials and downsizing, which are often found in public service areas of developing countries (Lopes and Theisoehn 2003, 6). Some of the most important incentives for preserving capacities and maximizing their use are those grounded in governance systems based on the rule of law and human rights (Lopes and Theisoehn 2003: 6,50; see also Manila 2003: iii, 12).

#### 5) A different understanding of capacity: the organizational capabilities approach

One way to consider the development of capacity relating to anti-corruption is through the perspective of organizational capabilities analysis arising from studies in organizational and management science. Although these studies derive from analyses of private firms, they also seem relevant to understanding state institutions.

Firm capabilities are defined as firm know-how that enables an organization to perform activities that produce outputs characteristic of that firm.<sup>15</sup> Similarly, firm capabilities indicate the capacity to bring about certain outcomes from intended actions.<sup>16</sup> One can get a sense for what capabilities are by considering the operations of large firms that have distinctive products and have developed firm-specific knowledge relevant to production. Firms manifest two types of capabilities. First, “*the ability to organize (coordinate, integrate) existing resources.*”<sup>17</sup> Sometimes called recombinative capabilities<sup>18</sup>, in this form, capabilities relate to the information gathering and accessing that knowledge management enables. The second type of capabilities pertains to firms’ abilities to learn, sometimes referred to as dynamic capabilities.<sup>19</sup> Dynamic capabilities are most evident in the process of innovation. One definition holds that dynamic capabilities involve the ability to “*reconfigure, redirect, transform and appropriately shape and integrate existing core competencies with external resources and strategic and complementary assets to meet the challenges of a time-pressured, rapidly changing Schumpeterian world of competition and imitation.*”<sup>20</sup> Both types of capabilities are essential to determining the competitive advantage of firms and firm performance.

The notion of dynamic capabilities yields a comprehensive view of production and the firm, that also gives full standing to the role of organizational learning. Teece, Pisano and Schuen argue that dynamic capabilities can be broken down into three parts: processes, positions,

<sup>13</sup> See Lopes and Theisoehn 2003: 1,62-63; Manila 2003, 12.

<sup>14</sup> Also addressed by Brautigam, 1996 and Land, 2000 (as cited in Boesen, 2004) and UNDP 1997, 7.

<sup>15</sup> Giovanni Dosi, Richard R. Nelson, and Sidney G. Winter, *Introduction: The Nature and Dynamics of Organizational Capabilities*, in eds. Dosi, Nelson, and Winter, *supra* note at 1.

<sup>16</sup> *Id.* at 2.

<sup>17</sup> Foss and Foss, *supra* note at 5.

<sup>18</sup> B. Kogut and U. Zander, *What do firms do? Coordination, Identity and Learning*, 7 *Org. Science* 502 (1992). On this view, firms produce new capabilities by recombining existing ones with other knowledge.

<sup>19</sup> Foss and Foss, *supra* note at 5.

<sup>20</sup>

and paths.<sup>21</sup> Processes refer to the way things get done in the firm, including routines, patterns of current practice, and learning.<sup>22</sup> Routines involve the function of coordination and integration of activities, in such areas as outsourcing, quality control monitoring, and coordination of production across internal facilities.<sup>23</sup> Learning occurs as a way of improving production processes, through experimentation and repetition.<sup>24</sup> Similarly, reconfiguration allows firms to alter practices to respond to changing environments. Examples include surveillance of the market for new developments and the search for best practices.<sup>25</sup> In this respect, reconfiguration arguably also involves organizational learning.

Positions relate to the location of the firm in the competitive landscape. Factors such as the firm's current technological and intellectual property resources, complementary assets, customer base, external relations with suppliers and competitors all determine firm position.<sup>26</sup> The paths of the firm pertain to the strategic alternatives available to it based on activities in the past.<sup>27</sup> In other words, history matters.<sup>28</sup>

The factors that determine capabilities are important because they facilitate organizational learning.<sup>29</sup> Firms refine their capabilities, particularly in relation to processes, through organizational learning over time.<sup>30</sup> Organizational learning will facilitate refinements in practices—involving coordinating production and inter-firm monitoring—that improve firm capabilities overall. Given the tacit nature of much organizational knowledge, learning that improves production may occur, even though participants are largely unaware of the process.<sup>31</sup>

Tacit knowledge and human capital that the concept represents are crucial to the output firms produce. Know-how, however, cannot be reduced to simple contractual terms. Nor can it simply be bought and sold. Yet human capital investments are noticeable and valuable, despite the fact that they cannot be sold or traded.<sup>32</sup>

The capabilities analysis highlights some of the challenges of reforming institutions to control corruption. The following variables must be weighed:

- Ability of organizations to undertake change.
- Human capital endowments. Specifically, capacity of existing staff to implement and manage change.
- Existing routines within an organization. Attention must be given to the compatibility of changed routines with other routines within an organization and the capacity building necessary to enable the new routines to function.
- The position of an institution with respect to other state institutions. The position of a firm vis-à-vis other state institutions.
- The position of an institution in relation to clients. In some sectors, state authorities may have very close relations to industries they regulate.

## 6) Alternative approaches to capacity development

There are two different approaches for how agencies ought to do capacity development.<sup>33</sup>

Type 1 – Projects:

- Participatory

---

<sup>21</sup> Teece, Pisano, and Schuen, *supra* note at 341.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 342.

<sup>25</sup> *Id.* at 345.

<sup>26</sup> *Id.* at 345.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 346.

<sup>29</sup> Christopher S. Boerner, Jeffrey T. Macher, and David J. Teece, *A Review and Assessment of Organizational Learning in Economic Theories* in eds. et al., *supra* note at 109-110.

<sup>30</sup> *Id.*

<sup>31</sup> Dosi, et al., *supra* note at 11.

<sup>32</sup> Hart, *supra* note at 1766 (“Since human assets cannot be bought or sold, management and workers presumably own their human capital both before and after any merger.”). Contrary to Hart, it is precisely because a firm holds human capital that certain mergers take place. In seeking to merge in order to realize certain productive purposes, firms rely in part on the likely application of employee know how to carry on production after the merger's completion.

<sup>33</sup> See Manila 2003: iii, 14-15; Boesen 2004, 17.

- Agency serves as organizer and initiator of capacity development processes
- Criticized for undermining capacity development and national ownership
- Effective for translating programmatic plans into action
- Provides a testing ground for scaling up promising innovations
- Provides a conducive environment for building strong partnerships between local actors and external providers.

#### Type 2 – Programs:

- Questions participation designed by aid agencies
- Believes it is not the role of agencies to organize, analyze, and design
- Intervention is supposed to be based on a domestic process and led by demand upon request
- Promotes national ownership
- Provides budget support
- Provides an opportunity for donors to coordinate efforts with nationally defined policies and institutions, and in so doing responding to a locally driven agenda.

The current thinking on new aid instruments falls along the lines of aid agencies withdrawing from a Type 1 approach and going toward a Type 2, creating ex-post funding mechanisms to support government reforms at their own pace (Boesen 2004, 9-10). Whether or not a Type 2 approach offers the way forward in all circumstances is unclear, especially since it assumes “a reasonable level of government accountability and administrative competence” which is simply not the case in many countries (Manila 2003, 15). What is important to note in the trend, however, is that such an approach is considered more consistent with the national priorities and processes as well as promoting ownership. The Type 1 approach could be altered to meet these criteria or a combination of the two approaches could also occur. Even though Type 2 is seen as having a lot to offer, it is more effective when there is a complementary Type 1 project also taking place (Manila 2003, 15).

There is also a split between whether it is better to focus on internal factors of an institution or contextual factors. An internal, or closed system, approach emphasizes training, management systems development, studies, and equipment and supplies as solutions (Boesen 2004, 5; UNDP 1997, 8). This approach functions by identifying performance targets, defining functions, identifying skill gaps, training requisite skills, paying adequately, ensuring technology and supplies, and deploying and retaining (Boesen 2004, 5). The contextual approach, on the other hand, views effective public sector performance as attainable through strong organizational cultures, good management practices, and effective communications networks (Boesen 2004, 6). A contextual approach argues that when performance problems are embedded in economic, social, and political deficiencies then the efforts to improve performance must focus on these social contexts (Grindle and Hilderbrand 1995, 443 and Hirshmann 1993 as cited in Boesen 2004, 6).

## C. Policy trends and current initiatives

### 1) The Multi-Pronged Approach

As outlined above, anticorruption strategies and programs have moved from focus being placed merely on enforcement towards actions oriented in three directions: (i) enforcement, (ii) prevention and (iii) public education and awareness programs.

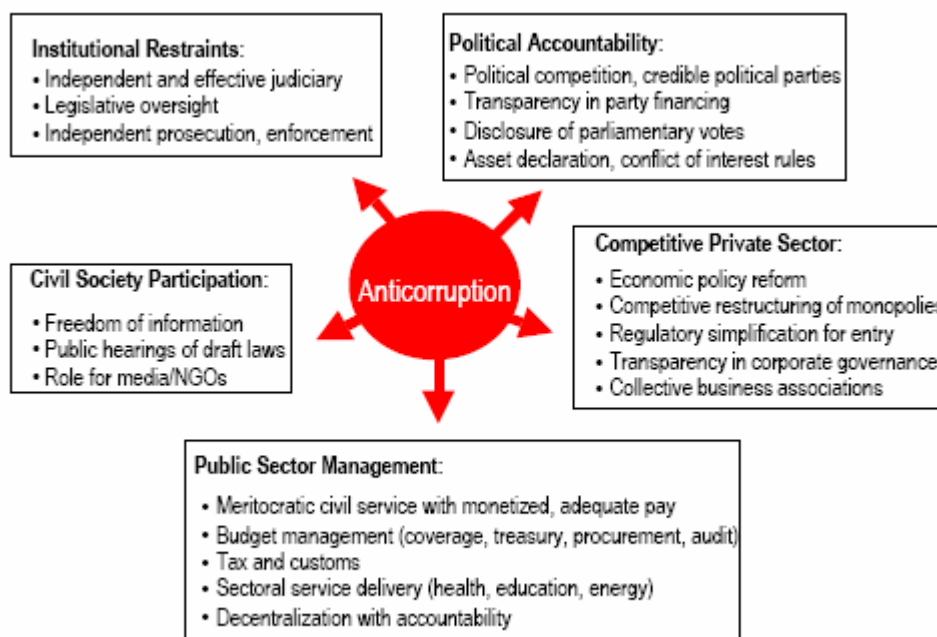
However, until recently, most of anticorruption programs have been dealing with measures intended to reform public administration and public finance management.

The wide recognition by both academia and practitioners of the necessity to take in due account the results of analysis showing that “*the roots of corruption extend far beyond weaknesses in the capacity of government*”<sup>34</sup> have led to the development of multi-pronged strategies addressing broader structural relationships with the goals of (i) enhancing state capacity and public sector management, (ii) strengthening political accountability, (iii) create effective civil society participation, and (iv) establishing a competitive private sector.

Obviously, anticorruption strategies should be tailored according to the specific situation of each single country.

<sup>34</sup> World Bank, *Anticorruption in Transition – A Contribution to the Policy Debate*, 2000, 39.

**Figure 1. Multi-pronged Strategy: Addressing State Capture and Administrative Corruption**<sup>35</sup>



The necessity of multi-directional approach and consequent actions is confirmed by a recent article by Susan Rose-Ackerman, a noted anti-corruption scholar, highlighting five reforms that she believes could be taken to generate tangible progress on anti-corruption. These reforms are:

- improve accountability at the grass roots by undertaking small scale improvements at low political cost, which can generate substantial gains
- benchmarking costs in procurement, to identify cost distortions
- tax simplification and incentive based reforms
- streamlining of business regulations
- advance international initiatives to increase transparency in international concession contracts for natural resources and to identify and recoup proceeds of corruption.<sup>36</sup>

Corruption is now a central priority in international development. While the objective of reducing corruption is clear, the plurality of approaches currently underway to fight corruption may generate inconclusive findings on their returns. Nonetheless, in particular, the trend in anti-corruption programs towards the promotion of governance and citizen empowerment merits further study.

## 2) Current initiatives

Corruption issues are inherently tied to the development of good governance. Anti-corruption and the promotion of good governance are found in a wide array of projects currently ongoing on the global, regional and local levels. Anti-corruption initiatives generally seek to counter corruption by singling out weak aspects of certain government institutions, such as the inability to provide public services or the lack of a functioning judiciary. Corruption's endemic nature brings it to all levels of the state, which can make different anti-corruption programs

<sup>35</sup> *Id.*

<sup>36</sup> Susan Rose-Ackerman, Governance and Corruption, in ed. Bjorn Lomborg, Global Crises, Global Solutions 301 (2004).

completely different in nature, despite the fact that they share the same objective of fighting corruption.

This heterogeneity is seen in reviewing the programs currently being executed under the rubric of anti-corruption. There has been a clear move towards initiatives that assist in improving the efficacy of democratic governance, on both the part of civil society and the functioning of government institutions. The strengthening of democratic governance and aiding the role of citizens through local organizations has been a primary concern of projects going into the 2005 fiscal year.

A large part of the current anti-corruption initiatives currently in progress seek to develop the state's capacity for the Rule of Law and assist in the empowering of Civil Society to represent their interests against the negative impacts of corruption. GTZ (Deutsche Gesellschaft für Technische Zusammenarbeit) has been particularly active in providing assistance, both training and advisory, towards the development of the Rule of Law; while USAID, although active in other areas, places specific emphasis on the role of civil society organizations, the media, and public education as means to raise awareness to promote accountability and as a necessary condition for effective change among political elites.

*Rule of law projects.* One of the principle institutional weaknesses that permits and sustain the existence of corruption is that of an ineffective judiciary. Rule of Law projects are one of the more common initiatives in the international community, and possibly one of the more effective in producing results. An effective judicial framework is a necessary precondition for successive anti-corruption reforms, which would be rendered ineffective without the possibility of resorting to legal measures. Rule of Law reforms are usually centered on donors providing training and advice to state officials. For the most part, they are organized in a form similar to the GTZ project in Armenia with core activities that include providing advice and training, by way of legal seminars, in legal drafting of areas that are particularly important for legal and judicial security and for the economic activities of government. Another example is a GTZ program in Chile that provides training and advice on measures for the implementation of a new Criminal Procedural Law-Code. These programs, by contributing to legal and judicial security and the rule of law, also seek to contribute to the prevention of corruption. Rule of Law initiatives can be as simple as providing correct legal information to legislatures to aid them in making the right decisions. This is the case for the NORAD program in El Salvador that provides the legislators of the national parliament with professional advisory and training services so as to allow them to perform their tasks in the most competent manner.

*Civil Society and Citizen Empowerment.* Projects dealing with Civil Society and Citizen Empowerment have increased in number among the recent anti-corruption initiatives and show promise of bringing about change from the bottom up. This approach is seen in the work of several major donors and follows the pattern of assistance as seen in the USAID program in Zimbabwe. This program seeks to enhance civil society's advocacy activities with Parliament and local authorities to make government more responsive to the public. Another program along similar lines is the NORAD initiative in South Africa that empowers farm workers to have an increased influence on government policy. Both programs reflect the idea that by involving civil society in advocacy and information campaigns they will create a general shift in public attitudes. This, it is thought, will lead to active citizen demands for accountability in the use of public resources. Some of these programs simply provide support for regional and local civil society organizations already in existence. The UK Department for International Development's (DFID), for example, has provided continual support for Transparency International Bangladesh, and the Netherlands's Ministry of Foreign Affairs supports the Burkina Faso NGO Réseau National de Lutte Anti Corruption (REN-LAC) that seeks to represent human rights and government accountability.

*Anti-corruption enforcement capabilities.* Assisting in the development of anti-corruption enforcement capabilities has been a priority for some time, however, it is falling as a proportion of overall anti-corruption assistance. This change could be a result of the importance of rule of law reforms as a precondition to the creation of effective enforcement mechanisms. Regardless, the creation of anti-corruption commissions is still a popular move for leaders faced with a public outcry to fight corruption or wishing to impress international donors or investors. The international community can take several measures to strengthen these mechanisms, other than strengthening general rule of law. Donors can provide general assistance to local enforcement teams to carry out their mandate such as training, offering

materials and equipment, and providing foreign advisors. This is the case for the DFID's Enhanced Support Project for Zambia's Anti-Corruption Commission (ACC), which is struggling to uphold a government mandated zero tolerance policy against corruption crimes.

*Democratic Institutions and Governance.* Parallel with the development of the rule of law are programs designed to develop democratic institutions and governance. Such programs focus specifically on assisting the institutions of government in becoming more responsive to the needs of the people that they are supposed to serve. A classic example of such a program is seen in the USAID Democracy and Governance program in Angola. This initiative seeks to better governance and fight corruption by strengthening parliament and political pluralism among the citizenry. The general goal of such programs is to achieve a more effective management of public services through increased oversight of a functioning and influential government body.

*Revenue Administration and Procurement Reform.* The reform of revenue administration and procurement bodies is quite possibly the most pervasive institutional failure that causes corruption, and not surprisingly the most common type of anti-corruption initiative. Simple and cost effect applications of transparency and criminally enforceable accountability have shown solid promise.<sup>37</sup> On the regional level, the creation of *Procurement Principles and Rules* on behalf of the international regional banks is a step in the right direction. At the international level, such initiatives as the World Bank Public Expenditure and Financial Accountability (PEFA) Program supports integrated and harmonized approaches to assessment and reform in the field of public expenditure, procurement and financial accountability. At the state level, donors sponsor reform programs with the same goals in mind, to create financial accountability and weed out corruption in the tax and procurement administrative systems. Plans, such as the IBRD sponsored Colombia Public Financial Management Project seeks to strengthen the capacity of the tax and customs authorities (Dirección de Impuestos y Aduanas Nacionales, DIAN) in fostering voluntary compliance in collecting revenue efficiently, along with combating tax evasion and smuggling. These programs attempt to strengthen the government's general public expenditure management to ensure a more effective use of public revenues.

Developing states rich in natural resources have been cursed in corruption of those industries, which usually drains the benefits from the state to the pockets of the corrupt. The newly founded Extractive Industries Transparency Initiative (EITI) in conjunction with the UK DFID seeks to bring transparency and accountability to the major extractive industries, a significant source of national revenue for developing nations. It is already operational in such states as Azerbaijan, Ghana, and the Kyrgyz Republic and has started implementation in other states. On the other hand, a good example of auditing and oversight reform can be seen in the GTZ project to strengthen the Central Organization for Control and Auditing (COCA). This project seeks to enable the state mandated COCA complete its auditing duties and thereby contribute to good governance through oversight. In the first phase, the project has already contributed to the preparation of institutional structural adjustments by implementing modern auditing methods and training.

As an example of anticorruption programs by international donors, the following table represents the twenty-two program types drawn from the USAID Office of Democracy & Governance's 2003 Inventory of programs with an anti-corruption focus or components. Each type is further divided into sub-types that more specifically characterize the program's focus.

---

<sup>37</sup> TI Global Corruption Report 2005.

USAID ANTI-CORRUPTION PROGRAMS		
Type	Sub-type	
	Reducing Corruption	Strengthening the Anti-Corruption Environment
Anti-corruption commission	Commissions Ethics Ombudsman	
Agriculture	Audit/Internal Control	
Conflict	Local government	Cooperatives
Corporate Governance	Accounting reform Corporate governance	
Cross-sectoral	Advocacy	
Civil society	Advocacy Capacity Building Civic Education Financial Management/Procurement Freedom of Information Acts Oversight	Advocacy Capacity Building Oversight
Education	Governance	Data Collection
Elections	Political Finance	Elections administration Monitoring Party Development
Energy	Financial management/accounting	Metering Regulation Privatization
Environment		Environmental Management Environmental Governance Forest Management, Land Registration Water management
Financial sector	Money Laundering	Microfinance Banking Capital Markets
Fiscal/customs	Budget Reform Customs Reform	Tax Reform
Financial management	Audit/Internal Control Financial management Supreme Audit Institutions Treasury systems	
Health	Family planning (inventory controls) Financial management Pharmaceuticals management	Advocacy Health Reform Health Financing
Legislative	Budget oversight Freedom of Information Acts	Legislative strengthening
Local Government	Financial management/procurement Red tape	Fiscal Decentralization Local Government Capacity Service delivery
Media	Freedom of Information Acts	Civic Education Independent Media Investigative Journalism Media
Privatization		Privatization
Private Sector	e-government Red tape	Business association development Credit Real estate/cadastre Regulatory SME development

		Statistics Policy
Procurement	Procurement e-Procurement	
Rule of Law	Ethics Money laundering	Alternative Dispute Resolution Court administration/case management Commercial Law Criminal Justice Civil society oversight Judicial Reform Judicial Training Legal Reform Police Police reform Prosecutor training

## D. Lessons learned from donors' experience

1) In conducting the background study for this project, IDLO encountered many of the same problems other analysts have noted. Research on the state of the anti-corruption fight is hampered due to the following:

- *Direct efforts to fight corruption are relatively few.* Many programs that involve anti-corruption aspects are defined as governance, judicial, civil service, or procurement reform. Evaluating the anti-corruption programs *per se* is very difficult if not impossible in many cases.
- *Donors do not keep easily retrievable information on anti-corruption.* To the extent it exists, the information is descriptive rather than evaluative. Finding good case studies is difficult. Some of the informational shortfall is attributable to decentralization of aid. Likewise, critical documents that could shed light on the effectiveness of programs are available in only local languages.
- *Even well designed programs may not provide evidence of success in the short term.* Successful anti-corruption efforts take time.
- *Within individual states, anti-corruption programs may be underwritten by a variety of donors or through domestic resources.* Indeed, some donors fund anti-corruption programs through multiple agencies (e.g. United States funds anti-corruption through the Departments of State, Justice, Commerce, Treasury and USAID.) Because these efforts may proceed on parallel tracks and reporting occurs along separate lines, formulating a comprehensive view is difficult to achieve.

2) Evaluations of the success of anti-corruption programs are few. Broad consensus exists on some main elements of successful anti-corruption programs, however, the principles that exist have no systematic empirical grounding. Part of the reason for this situation is the relative novelty of anti-corruption as a concern of the international community. Indeed, as mentioned earlier, it was not until the 1990s, that anti-corruption had evolved from a topic merely alluded to into a mainstream concern.<sup>38</sup>

As some analysts have noted, methodologies for anti-corruption programs have changed substantially since this time. Initial efforts focused heavily on advocacy, data collection, and narrowly targeted anti-corruption programs.<sup>39</sup> Later programs have shifted to structural and institutional elements, through such initiatives as anti-corruption commissions. The limitations of these approaches are now well recognized. What follows is an overview of some of the lessons from these initial approaches, and current guidance on the preferred methodologies for fighting corruption employed today.

<sup>38</sup> See e.g. Sahr Kpundeh, at 257.

<sup>39</sup> Pundeh at 258.

(i) *The notion of “political will” discussed in much anti-corruption literature is a truncated substitute for what is really needed: political support.* By invoking the concept of “political will” rather than political support, anti-corruption is viewed as something that can arise through technocratic means. So long as the top leadership in a country want to see anti-corruption efforts succeed, this view suggests, it will come about. Yet if history is any guide, few governments are self-regulating to the extent needed to reform themselves. At an extreme, in neo-patrimonial systems such as those operating in many African countries, it is unlikely that elites will have the will to reform. Political pressure is the force that can drive reform.

Historical experience suggests that while elites may push for reforms, the alignment of reform movements with broader political movements can be essential for success. In the United States, during the period of the late 19<sup>th</sup> Century through the early 20<sup>th</sup> Century, growing dissatisfaction with corruption and inefficiency in the judiciary fed the reformist cause.<sup>40</sup> For years, this movement was driven primarily by elites, who sought to develop greater propriety in the legal profession and the courts generally. An important turning point in developing political support occurred when the powerful labour movement added judicial reform to its agenda, and populist politicians, like President Teddy Roosevelt capitalized on this sentiment and proposed radical reforms. Likewise, the existence of economic and social issues for which citizens sought judicial redress made judicial reform a matter of democratic concern.<sup>41</sup> What this history suggests is that the challenge of gaining popular support for legal and judicial reform hinges in part on the ability to align legal and judicial reform movements with broader political concerns.

In this sense, democratic political systems appear more capable of channelling public opinion into political power.<sup>42</sup> In particular, competitive political systems are uniquely capable of creating incentives that will encourage leaders to implement anti-corruption programs. Politicians in danger of losing their jobs in an election are more likely to undertake anti-corruption programs than those who are confident that no opposition exists.<sup>43</sup> Outside of the voting context, greater civic engagement may lead to improved monitoring of public officials.<sup>44</sup> Hence, we cannot divorce the fight against corruption from efforts to advance democratic institutions.

It is important, however, not to look at democracy as a panacea. Research suggests that the mere existence of a democratic form of government is weakly correlated with reduced corruption.<sup>45</sup> Instead, the research suggests that reductions in corruption correlate to the depth of democracy in a country.<sup>46</sup> Countries with longer experience and stronger democratic institutions realized decreased levels of corruption.

(ii) *Enforcement of anti-corruption laws is an essential weapon in the anti-corruption fight.* Yet the difficulty of detecting and initiating prosecutions coupled with the significant resource demands of corruption prosecutions, mean that anti-corruption laws tend to be under-enforced in most jurisdictions. Moreover, in weak or struggling states, mustering the political capital to pursue legal actions against public officials may come at a high price.

Changing state procedures and operations may generate systems that are strong and capable of preventing corruption from occurring in the first place, without drawing political fire.

(iii) *Improve Government Transparency.* Budgeting and procurement systems that are transparent with procedures that are rigorously applied reduce opportunities for corruption to occur. Such efforts may reduce grand, or political, corruption as well as lower level bureaucratic corruption. Substantial donor assistance has gone to improving procurement and budgeting systems in many developing countries in recent years. While maintaining quality systems in these areas is difficult, they are necessary ingredients of an effective state.

---

<sup>40</sup> Widner, *supra* note, at 8.

<sup>41</sup> *Id.* at 13.

<sup>42</sup> See Habermas, *Between facts and norms.*

<sup>43</sup> Michaelson at 43.

<sup>44</sup> Michaelson at 64.

<sup>45</sup> Michaelson at 42.

<sup>46</sup> Michaelson at 42 citing Amundsen 1999

Likewise, government ethics programs, that require asset disclosure and define ethical standards for officials, if applied, can raise ethical standards and improve accountability.

(iv) *Increase Civil Service Pay.* While few have offered a solution to the problem, most corruption analysts agree that increasing civil service pay is a way of reducing incentives to participate in bureaucratic or routine corruption.<sup>47</sup> Yet, to take such steps requires budgetary resources. Even if officials support such action, gathering tax resources to fund the increased salaries is a challenge that goes beyond the underlying purpose of reducing corruption. In contrast to this view, others have argued that rather than increase civil service pay, it is the reform of the bureaucracy along meritocratic lines that have a negative impact on corruption.<sup>48</sup>

(v) *Reduce Government Red-tape.* Poorly designed regulation of the economy can create uncertainty or delays, thus creating incentives to circumvent the formal economy or bribe officials to overcome the regulation. Research on regulatory compliance indicates that firm compliance with regulations is never universal and tends to decline as regulations become unduly complex or onerous. By streamlining regulation, states can improve regulatory compliance and reduce the interactions between private firms or individuals with state officials. Efficient regulation does not require lowering substantive regulatory standards, instead evidence from Scandinavian countries suggests that streamlined regulation is compatible with high levels of regulatory control.<sup>49</sup>

(vi) The experience of anti-corruption commissions in Africa perhaps best illustrates the need for comprehensive solutions. The rationale for anti-corruption commissions is that by creating independent institutions mandated to investigate and take action against corrupt activity, states can overcome limitations resulting from existing capacity deficiencies and weak institutions. Where existing institutions fall prey to political influence, these independent commissions can initiate action even against politically powerful actors. While some examples of successful anti-corruption commissions in places like Hong Kong and Singapore exist, experience in most of Africa has highlighted weaknesses in this approach.

When examined cross-nationally, differences in the effectiveness of different anti-corruption commissions become evident.

Even for those states that prosecute a high percentage of cases investigated, conviction rates are quite low. According to another study of the Uganda Inspector General, of 16,361 corruption-related cases handled between 1996 and 2001, only 10 convictions resulted. Few agencies have conviction rates that would suffice for the institution to be considered effective. These statistics alone do not suggest that the agencies are useless, but they do indicate that anti-corruption commissions are not silver bullet solutions to the problem.

Based on this analysis, the study's author has proposed the following requirements for successful anti-corruption commissions:

- Genuine independence (e.g. tenure of executives secure from presidential interference).
- Consistent and sufficient funding.
- Reasonably functioning complementary institutions.
- A functioning media that can raise awareness on investigations and enforcement.
- Internal accountability mechanisms to ensure they do not commit abuses themselves (e.g. through legislative oversight).<sup>50</sup>

*Judicial and prosecutorial capacity.* As the poor conviction rates of the anti-corruption commissions highlighted above attests, building the capacity of judiciaries and public prosecutors is an essential component of holding officials accountable for corrupt conduct. In developing countries that figure drops to. Efforts to improve corruption control in developing

<sup>47</sup> See US General Accounting Office, Sub-Saharan Africa Report, p11 (“in the countries we examined, low and untimely payment of salaries was cited as a significant and leading root cause of corruption”).

<sup>48</sup> Michaelsen, at 66.

<sup>49</sup> IFC, Doing Business 2005.

<sup>50</sup> Sahr Kpundeh, Anticorruption in Africa in Kpundeh and Levy, Building State Capacity in Africa (2004).

countries must recognize that resources available to state enforcement agencies constitute an inherent limitation on the effectiveness of the institutions.

3) There are a number of problems facing the anti-corruption field that must be acknowledged and overcome for progress to be made:

- First, there is the sense of many observers that there are few success stories or examples of reducing corruption in a sustained way.<sup>51</sup>
- Second, there is the problem of knowledge. Many donors do not treat the issue with much depth in their programs and donors have not done enough to evaluate and capture relevant lessons from their anti-corruption programs.<sup>52</sup>
- Third, there is the lack of available funding. While many donors discuss the importance of anti-corruption, evidence suggests that funding may not be enough. The United States, for example, allocated approximately \$33 million per year to sub-Saharan Africa for anti-corruption programs, a fraction of its \$1.4 billion in assistance to the region overall.<sup>53</sup> In twelve countries, US anti-corruption assistance totalled less than \$1 million per year.

There is an important and recent trend in the donor community to take stock of the experience accumulated until now in the implementation of anticorruption strategies and programs and to improve knowledge and information sharing among donors.

According to an OECD – Development Assistance Committee report, the current stage of the fight against corruption is marked by five aspects.

The advocacy movement has been successful in raising awareness, developing analytical tools, and deepening knowledge on corruption. Civil society organisations have begun getting involved in direct action, as opposed to advocacy.

Donor agencies have improved their ability to protect their funds from corruption.

Donor approaches have focused increasingly on poverty-reduction, harmonizing and developing more common donor approaches, and untying of aid. These have in turn presented new challenges to anti-corruption and accountability.

There is a shift away from conditionality approaches to more collaborative approaches, resulting in agreed upon solutions.

Significant numbers of anti-corruption programs and activities have been initiated, new evaluation tools have started to emerge, and more should be available in the future.

Some of the emerging lessons coming from donor experience put the emphasis on the following points:

- The need for long-term, comprehensive approaches.
- Corruption manifests itself in a wide variety of forms.
- There is a wide variety of entry points. Fighting corruption does not have to be the main or sole point of entry. Significant work, not identified as anticorruption is done under and in the name of transparency, capacity building and institutional strengthening.
- Great importance of civil society involvement.
- Building coalitions and partnerships with a wide range of stakeholders.

In a recent study of the effectiveness of US anti-corruption programs in Sub-Saharan Africa, the US General Accounting Office produced some other interesting lessons learned about the conditions and components necessary for programs to succeed. First, political will and commitment from a country's leadership are essential. Second, widespread public support is necessary. Third, the programs must be tailored to each country's unique historical and economic conditions. Fourth, programs should take a multi-pronged approach emphasizing prevention, education, and law enforcement. Fifth, transparency and public access to information are important to ensure adequate oversight of government. Finally, because corruption cannot be eradicated quickly and simply, anticorruption efforts require long-term commitment to gain public confidence.

<sup>51</sup> OECD, DAC OECD DAC, Synthesis of lessons learned of donor practices in fighting corruption, 2003, p. 18.

<sup>52</sup>Id. at 49.

<sup>53</sup> US General Accounting Office, *US Anticorruption Programs in Sub-Saharan Africa Will Require Time and Commitment* 15 (2004).

All the above lessons and experience need to be carefully assessed and taken in due consideration in going forward in designing anti-corruption strategies and programs.

## II. THE EFFECTIVE IMPLEMENTATION OF INTERNATIONAL CONVENTIONS: HOW TO ENHANCE INTERNATIONAL COOPERATION ON ANTI-CORRUPTION

---

### A. Implementation of International Conventions

#### 1) Current intergovernmental anticorruption instruments and initiatives

A clear indication of the magnitude of international anti-corruption efforts and, therefore, of the importance of this issue of public policy is given by the listing of the existing conventions and other instruments, listing which provides an overview and mapping of said efforts and constitutes evidence of the difficulties faced in the assessment of the mentioned efforts.

##### a) Major legal instruments

- United Nations Convention Against Corruption
- OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions
- Council of Europe Criminal Law Convention on Corruption
- Council of Europe Civil Law Convention on Corruption
- The European Union Anticorruption legal framework
- Organization of American States (OAS): Inter-American Convention against Corruption
- African Union Convention on Preventing and Combating Corruption and Related Offences
- Southern African Development Community (SADC) Protocol against Corruption

##### b) Other international governmental initiatives

- Group of Eight (G8) initiatives and commitments
- Stability Pact Anti-Corruption Initiative for South Eastern Europe
- ADB-OECD Anti-Corruption Initiative for Asia Pacific
- Anti-Corruption Network for Transition Economies
- New Partnership for Africa's Development (NEPAD)
- Good Governance for Development Program for the Arab countries (Middle East and North Africa)

##### c) Other international initiatives and fora

- UN Global Compact
- The International Anti-Corruption Conferences (IACC)
- The Global Forum on Fighting Corruption and Safeguarding Integrity
- World Economic Forum – Partnering Against Corruption Initiative (PACI)

##### d) Global guidelines for businesses and sector initiatives

- International Chamber of Commerce – Rules of Conduct to Combat Extortion and Bribery
- Transparency International and Social Accountability International: Business Principles for Countering Bribery
- OECD Guidelines for Multinational Companies
- Global Sullivan Principles of Social Responsibility
- International Federation of Consulting Engineers (FIDIC): Code of Ethics and Policy Statements
- International Association of Oil and Gas Producers (OGP): Position on Transparency
- International Council on Mining and Metals (ICMM): Sustainable Development Charter
- World Economic Forum and Transparency International: Anti-Corruption Program for Energy Companies
- TRACE Anti-Corruption Standards in Dealing with Agents and Intermediaries Internationally
- UNICORN, Trade Union Anti-Corruption Network

2) Promotion of ratification, implementation, and monitoring of anti-corruption conventions

a) Although there are some voices within the anticorruption community stating that “*focus on enacting improved anti-corruption laws is often misplaced*” and that “*the world is littered with properly drafted and enacted laws, which are ignored and unendorsed*”<sup>54</sup>, an effective legal framework is a decisive component of progressive reform.

The validity of this contention is true not only in respect to legislation directly focused on anti-corruption, but also with regard to other areas of the legal system directly or indirectly affecting corruption. A first general comment as to the international legal framework is that *said* framework, notwithstanding important progress made in the recent years, is not really in place.

The UN Convention is not yet in force and, in general, the ratification trend, especially in industrialized countries, is slow. While, in contrast, many African countries have already concluded the ratification process. Of the OECD countries, only Mexico has ratified the UN Convention.

Similarly, the African Union Convention is still not in force (notwithstanding that only 15 ratifications are required). The situation of the African continent appears thus more critical when compared to other continents or macro-regions. Indeed, irrespective of international conventions, there are no major regional anti-corruption initiatives like the Stability Pact Anti-Corruption Initiative for South Eastern Europe; the ADB-OECD Anti-Corruption Initiative for Asia Pacific; or the Anti-Corruption Network for Transition Economies.

These initiatives, active throughout the Asia-Pacific, Central Asia, Eastern and South-Eastern Europe, and the Middle East-North Africa Region (with the recent MENA-OECD Initiative on Governance and Investment for Development) are contributing extensively to raising awareness about corruption and support anti-corruption institutional reforms, generally through specific action plans.

The described situation leads to the conclusion that it is of the utmost importance for Africa that the African Union Convention enters into force as soon as possible, also in consideration of the follow-up mechanism provided for in Art. 22 of the Convention.

It would be a major shortfall not to implement this important legal instrument, which contains some innovative provisions, establishes a comprehensive framework and sets common agreed standards,. The emerging framework is definitely viewed as holding great promise for the countries of Africa.

A strong commitment to support prompt ratification and implementation of UN Convention and AU Convention by the major donors is, therefore, required.

b) By setting out an international framework of agreed rules and standards for addressing corruption along with an expression of a high level of political commitment, the UN Convention and AU Convention provide guidance and support for anti-corruption work at country level, as well as facilitating international cooperation in the control and sanctioning of corruption. Said conventions can serve reforming governments, citizens and donors by providing internationally agreed reference points for their work. They can create peer pressure on governments, promote collective pressure on the private sector and facilitate citizen pressure for national governments and the private sector to adhere to minimum standards.

Their impact becomes all the greater once they have been ratified by a significant number of eligible countries and entered into force. Thus, again, as a first step, signature and ratification of relevant instruments (in particular UN Convention and AU Convention) should be encouraged and supported.

---

<sup>54</sup> OECD DAC, Synthesis of lessons learned of donor practices in fighting corruption, 2003, p.33

However, anti-corruption conventions can only be effective if the states that commit to them by ratification translate their commitments, or better said their binding obligations, into actual implementation and enforcement at the national level. This too should be encouraged and promoted by the donor community, both at home and abroad.

Moreover, experience demonstrates that in order to hold governments to their commitments, it is necessary to have an institutionalised system of follow up, including monitoring. Once Conventions have entered into force, donor support for monitoring mechanisms is also essential. These include international or regional peer monitoring mechanisms, as well as national civil society monitoring efforts. Without strong monitoring, Conventions are unlikely to be effective.

Support to be provided by donor community through technical assistance and capacity building to developing countries to effectively carry on UN and AU conventions implementation shall include the following activities:

(i) *Awareness-raising*; promotion of signing and ratification: Donors, government and stakeholders need to raise awareness about the importance of Conventions among parliamentarians, affected members of the executive branch, private sector and civil society. Donors can provide information and materials; and support the organisation of workshops on the Conventions or particular aspects.

(ii) *Integration into national legislation*: Government and stakeholders need to assess legislative changes required to comply with Conventions provisions and the consistency of existing legislation.

(iii) *Institutional reform*: Government and stakeholders need to assess the kinds of institutional reform needed to comply with Convention standards, including assessment of the resources needed and provide assistance in order to align enforcement authorities with the objectives of the conventions.

(iv) *Monitoring processes*: It is a very material aspect of conventions implementation. The issue of monitoring is specifically discussed under paragraph B.

Beneficiary countries may address these standards with the double legitimacy deriving from the fact that (i) they were involved in the development of the standards and agreed to them; and (ii) the standards in question are internationally acknowledged.

The importance of donor support is also connected to the issue of funding since developing countries highlight the material costs of implementing international conventions (legislation, training of enforcement officials, the judiciary, etc.)

The range of topics covered by anti-corruption conventions in general and by UN Convention and AU Convention include, *inter alia*:

- Procurement
- Public sector hiring and promotion
- Public sector ethics and procedures, including codes of conduct for public officials and measures to prevent conflicts of interest
- Public reporting and access to information
- Private sector standards, including codes of conduct and accounting and auditing standards
- Criminalisation of bribery of domestic and foreign public officials
- Prevention and criminalisation of corruption-related money laundering
- Civil law remedies for those harmed by corruption
- International cooperation and mutual assistance
- Asset recovery.

As suggested by this long list, these elements are so wide-ranging that assistance in connection with convention implementation has to be regarded as a very effective entry point

for anti-corruption measures in programmes and institutions supported by development assistance.

Other initiatives to be carried on should be the following:

- (i) to provide assistance to Secretariat/Advisory Council of the African Union to develop a legislative guide for African Union Convention implementation and to explore the development of other appropriate implementation tools;
- (ii) to assist African developing countries to prepare national action plans aimed to UN and AU Conventions implementation;
- (iii) to provide support and enhance capacity at the national level in order to develop national anti-corruption strategies and plans of action, based on the extensive participation of stakeholders from state and civil society, strategies and plans of action to be preceded by national surveys to be equally supported;
- (iv) to promote harmonized approach to implementation of domestic anti-corruption laws.

### 3) Enforcement of OECD Convention

The OECD Convention raises different issues related to its enforcement (with important consequences in the area of asset recovery). However, the accession to said Convention by non-OECD countries should be strongly encouraged and supported as a mean to strengthen, in general, the international anti-corruption legal framework and, more specifically, the effectiveness of the Convention itself.

Development assistance agencies and major donors should also take into account the role that institutions in developing countries can play with regard to enforcement of foreign bribery prohibitions by donor countries themselves. Efforts to enforce prohibitions of foreign bribery by providing training in developing countries about the OECD Convention, as well as about the UN Convention (and where relevant the Council of Europe and OAS Conventions) in developing countries, particularly training for law enforcement officials, but also for business and civil society organisations and the media should be strongly supported as a means to address the supply side of corruption.

Further, with the assistance of headquarters, reporting channels to enable those in developing countries to report alleged foreign bribery in their country may be set up. Using these channels, donors can ensure that relevant information reaches law enforcement officials in OECD countries. Work with developing countries on mutual legal assistance shall be increased, including the provision of legal advisory services.

## **B. Building and Evaluating Monitoring Mechanisms**

In order to comply with their obligations under anti-corruption conventions or certain anticorruption initiatives, national governments generally need to introduce new legislation or to amend existing legislation and/or to create or develop new or enhanced structures or entities. They also need to ensure that adequate resources are available for the government bodies in charge of the follow-up and that sufficient attention is paid to the new obligations by those bodies.

International experience has demonstrated that in order to ensure that the commitments to which a government is bound are converted into effective action, a monitoring process must be implemented. Basically, a designated organisation or body should regularly check how much progress national governments have made in carrying out their treaty obligations and, where the progress is inadequate, put pressure on governments to improve their performance.

This is the reason why, as discussed below, generally, anti-corruption conventions and initiatives do contain provisions dealing with monitoring through an inter-governmental system of review carried out by officers of their fellow governments. This is aimed to set up a forum for peer pressure and also for inputs by groups and organisations interested in seeing that

Conventions are effectively implemented. In addition to state peer review processes, monitoring is also carried on by civil society organisations, the most notable example being, at international level, the work effected by Transparency International (and its national chapters) and other civil society organizations. This report will only be dealing with intergovernmental monitoring systems.

After analysing features of monitoring and peer review mechanisms, this Report shall describe some of said systems currently existing or provided by conventions or other anticorruption initiatives, highlighting features and/or issues which may be relevant from the technical assistance or capacity building perspectives.

### 1) Monitoring and peer review mechanisms

For the purposes of this Report and the proposed actions, it is important to examine the practice of peer review and the related effect of peer pressure in the context of international policy making, outlining the main features of these two concepts.

#### a) *The concept of peer review*

The term “peer review” in the present context has not been rigorously defined. However, over the years, the expression has taken on a specific meaning in the practice of international organisations<sup>55 56</sup>.

Peer review as a working method is generally associated with the OECD. However, several other intergovernmental organisations make use of this technique as well.

Within UN bodies and specialised agencies, States use peer review to monitor and assess national policies in various sectors, from environment<sup>57</sup> to investment<sup>58</sup>. The IMF Country Surveillance mechanism may be considered as having some common aspects with peer review. Peer review has also been developed within the World Trade Organisation under the Trade Policy Review Mechanism<sup>59</sup>.

Peer review can be described as the systematic examination and assessment of the performance of a State by other States, with the ultimate goal of helping the reviewed State improve its policy making, adopt best practices, or comply with established standards and principles. The examination is conducted on a non-adversarial basis, and relies heavily on mutual trust among the participating States, as well as their shared confidence in the process. When peer review is undertaken in the framework of an international organisation – as is usually the case – the Secretariat of the organisation also plays an important role in supporting and stimulating the process. With these elements in place, peer review tends to create, through this reciprocal evaluation process, a system of mutual accountability.

A single country peer review may relate to governance, economics, education, health, environment, energy or other policies and practices. Within one or more of those subject areas, a State may be examined against a wide range of standards and criteria, such as conformity with policy guidelines, or implementation of legally binding principles. Peer review

---

<sup>55</sup> On peer review and peer pressure, especially in the area of economic policy, see Peer Pressure as Part of Surveillance by International Institutions, Discussion led by Mr. Niels Thygesen, Chairman, Economic and Development Review Committee, 4 June 2002 (<http://www.oecd.org/pdf/M00031000/M00031293.pdf>). For an analytical paper on the use of peer review in a subject area, see Joint Group on Trade and Competition, Peer Review: Merits and Approaches in a Trade and Competition Context, 6 June 2002, COM/TD/DAFFE/COMP(2002)4/FINAL.

<sup>56</sup> Literature on peer review is scarce. Peer review is sometimes addressed, however marginally, in the context of the debate on “compliance”, and particularly within the academic dispute “enforcement vs. co-operation”, which opposes the managerial school of international relations to the institutionalists. See, for example, George W. Downs, “Enforcement and the Evolution of Co-operation”, Michigan Journal of International Law, vol. 19, no. 2, 1988, pp. 319 ff. For a general introduction to the mechanisms of follow up and compliance in international organizations, see N. Blokker & S. Muller (eds.), Towards More Effective Supervision by International Organizations. Essays in Honour of Henry G. Schermers, Vol. I, Dordrecht / Boston / London, 1994, and more recently, H. Ruiz Fabri, L.-A. Sicilianos, J. M. Sorel (eds.), L'effectivité des Organisations Internationales: Mécanismes de suivi et de contrôle, Athènes / Paris, 2000.

<sup>57</sup> See, for example, the Environmental Performance Reviews Program carried out by the UN Economic Commission for Europe.

<sup>58</sup> Within UNCTAD, some programmes submit the investment policies of developing countries to peer review.

<sup>59</sup> See Joint Group on Trade and Competition, Peer Review: Merits and Approaches in a Trade and Competition Context, 6 June 2002, COM/TD/DAFFE/COMP(2002)4/FINAL.

can also be carried out thematically<sup>60</sup>, where several countries are examined at the same time with respect to a particular theme. Peer review with regard to an individual State or topic typically is carried out on a periodic basis, with each review exercise resulting in a report that assesses accomplishments, identifies shortfalls and makes recommendations.

Other mechanisms for monitoring and ensuring compliance with internationally agreed policies and norms<sup>61</sup> may be distinguished from peer review, as follows:

- Judicial proceedings: the final outcome of peer review is not a binding act or a legal judgment by a superior body. In practice, peer review may act like a dispute settlement mechanism, by encouraging dialogue among States that may be of some help in clarifying their respective positions and interests. However, it is not intended to serve as a procedure for resolving differences and peer review never implies a punitive decision or sanctions;
- Fact-finding missions: independent bodies, such as commissions of experts from international organisations, carry out on-site fact-finding missions exclusively to investigate specific events or to establish facts. Peer review, on the other hand, is not necessarily carried out on-site, and it generally goes beyond fact-finding to include an assessment of the performance of a State. Fact-finding may be a part of a peer review process;
- Reporting and data collection: there are several systems in place for periodic reporting by States to independent bodies, which then analyse the submitted reports. One of the features of peer review is dialogue and interactive investigation, which can occur through the use of questionnaires.

#### *b) Peer pressure*

The effectiveness of peer review relies on the influence and persuasion exercised by the peers during the process. This effect is known as “peer pressure”<sup>62</sup>. The peer review process can give rise to peer pressure through: (i) a mix of formal recommendations and informal dialogue among the reviewed countries; (ii) public scrutiny, comparisons, and rankings; and (iii) the impact of all of the above on domestic public opinion, national administrations and policy makers. To have a great impact on public opinion, full access to information by the public shall be guaranteed. Active involvement of the media and the press results in most effective peer pressure.

Peer pressure does not manifest itself through legally binding acts, as sanctions or other enforcement mechanisms. Instead, it is a means of soft persuasion, which can become an important driving force to stimulate the involved States to reform, achieve goals and meet standards.

Peer pressure is particularly effective when it is possible to provide both qualitative and quantitative assessments of performance. The quantitative assessment might take the form of a ranking of countries according to their performance, and the drawing of real scoreboards reflecting such rankings.

Another example of a very effective peer review mechanism is the Internal Market Scoreboard, maintained by the European Commission, which ranks the EU Members States according to their performance in fulfilling the requirements of the internal market. However, these methods are appropriate and produce positive results only when the “rules of the game” are clear and the countries accept them.

#### *c) The functions of peer review*

Peer review can be used in a broad range of areas – for example, human rights, democratic governance and anti-corruption. In each of these fields, peer review, directly or indirectly, can serve the following purposes:

- Policy dialogue: during the peer review process, countries systematically exchange information, attitudes and views on policy decisions and their application. This dialogue can

---

<sup>60</sup> For instance, the thematic reviews in the sector of education.

<sup>61</sup> see A. Chayes, A. H. Chayes, *The New Sovereignty. Compliance with International Regulatory Agreements*, Cambridge Mass., 1995.

<sup>62</sup> The term peer pressure was initially used by the social sciences, particularly in pedagogy.

be the basis for further co-operation, through, for example, the adoption of new policy guidelines, recommendations or even the negotiation of legal undertakings;

- Transparency: the reviewed country has the chance, in the course of a peer review, to present and clarify national rules, practices and procedures and explain their background. As a result, the Secretariat is usually able to develop documentation and, in certain cases, a database which remains at the disposal of the Member countries, and which often is also made available to the public. In the case of the OECD Anti-Bribery Convention, for example, all the country implementation reports adopted at the end of the peer review process are published on the OECD web site. The combination of these two levels of enhanced transparency – toward peer countries and toward public opinion – enhances the effectiveness of the peer review and the related peer pressure;

- Capacity building: peer review is, *inter alia*, a mutual learning process in which best practices are exchanged. The process can thus serve as an important capacity building tool – not only for the country under review, but also for countries participating in the process as examiners, or – to a lower extent - simply as members of the responsible collective body. For example, certain methodologies commonly used in peer review – such as benchmarking or recourse to quantitative indicators in assessing compliance with policies – are unfamiliar to some officials and even to some public administrations before they participate in the peer review, and the exercise therefore represents an important learning opportunity.

- Compliance: an important function of peer review is to monitor and enhance compliance by countries with internationally agreed policies, standards, and principles. However, unlike a traditional legal enforcement mechanism, peer review works as a sort of “soft enforcement” system,<sup>63</sup> resulting in non-coercive final reports and recommendations rather than binding coercive acts, such as sanctions. In many contexts, the soft law nature of peer review can prove better suited to encouraging and enhancing compliance than a traditional enforcement mechanism. For example, unlike a legal enforcement body, examiners in a peer review exercise have the flexibility to take into account a country’s policy objectives, and to look at its performance in a historical and political context. Peer review can also tend to enhance compliance by helping to clarify differences in policy positions among countries, thereby leading to the resolution of those differences.

If the monitoring exercise is linked to an international instrument, the primary objective should be to first ensure proper implementation of the technical aspects of the instrument and then the practical impact of its implementation.

Monitoring can thus serve two immediate purposes. It helps to reveal any differences in interpretation of the instruments concerned and it can stimulate swift and effective translation of the provisions of these instruments into national policies and legislation.

Therefore, accurate monitoring is critical with respect to launching and implementing any successful anti-corruption initiative.

#### *d) Effectiveness and challenges of monitoring and peer review*

The effectiveness of peer review depends upon the combination of a number of factors, which may be summarised as follows:

- Value sharing: one precondition for an effective peer review is convergence among the participating countries on the standards or criteria against which to evaluate performance. A strong common understanding on these will prevent uncertainty or backtracking during the process;

- Adequate level of commitment: peer review can function properly only if there is an adequate level of commitment by the participating countries in terms of both human and financial resources. Thus, the participating countries must not only place adequate financial means at the disposal of the Secretariat; they must also be fully engaged in the process at different times as examiners, as active members of the collective body, and as subject of the examination;

- Mutual trust: since peer review is, by its nature, a co-operative, non-adversarial process, mutual trust is an important basis for its success. While the peer review process itself can contribute to confidence building, a large degree of trust and value sharing among the participants should be present from the beginning to facilitate, among other things, the disclosure of data, information and documentation, which are essential to the process;

- Credibility: the credibility of the peer review process is essential to its effectiveness, and to its added value in comparison with governmental reports or consultants’ certifications. There

---

<sup>63</sup> On the notion of soft law see the entry in J. Salmon (ed.), *Dictionnaire de droit international public*, Bruxelles, 2001.

is a strong linkage between the credibility of the process and its capacity of influence. To assure this credibility, the approach that the examiners – with the help of the Secretariat – take in the review must be objective, fair and consistent. In the same way, the Secretariat must guarantee independence, transparency and quality of work. Credibility can be undermined if the process is flawed by such factors as unqualified examiners, bias stemming from national interests, or inadequate standards or criteria against which to undertake the review. However, the main threat to the credibility of the process is the possibility of attempts by the reviewed State to unduly influence the final outcome. The involvement of the reviewed State in the process and its ownership of the outcome of the peer review is the best guarantee that it will ultimately endorse the final report and implement its recommendations.

With each of these factors in place, peer review can serve as a stimulus to incremental change and improvement. Through the accompanying effect of peer pressure – including both persuasion by other countries and the stimulus of domestic public opinion – peer review can create a catalyst for performance enhancement of anti-corruption strategies and programs which can be far-reaching.

## 2) Analysis of anti-corruption monitoring and peer review mechanisms

### a) *OECD Convention*

The OECD Working Group on Bribery in International Business Transactions monitors implementation of the Convention by its Party states. Monitoring is divided into Phase 1 and Phase 2.

The monitoring procedure conforms to a number of general principles.

It is worth mentioning:

Purpose: The purpose of monitoring is to ensure compliance with the Convention and implementation of the revised Recommendation. Monitoring also provides an opportunity to consult on difficulties in implementation and to learn from the solutions found by other countries.

Effectiveness: Monitoring must be systematic and provide a coherent assessment of whether a participant has implemented the Convention and 1997 revised Recommendation.

Cost-efficient: The monitoring procedure should be efficient, realistic, concise and not overly burdensome. It is necessary, however, to ensure that monitoring is effective, since together with the Convention and the Recommendation, it guarantees the level playing field.

Co-ordination with the Council of Europe and other organisations: International organisations such as the Council of Europe and European Union, and the participants in them share the goal of combating corruption, though the scope of their respective efforts and their more specific objectives may differ. All participants want to avoid duplication of effort. Since the Council of Europe has launched a procedure to monitor implementation of its anti-corruption principles and instruments (GRECO), efforts are made to keep abreast of these activities. Attention is devoted to avoid burdening a particular country with multiple on-site visits, thus confirming once more the need for coordination of international anti-corruption activities and sound management of resources.

Public information: The 1997 revised Recommendation calls on the Working Group to provide regular information to the public on its work and activities and on implementation of the Recommendation. This general responsibility must be balanced against the need for confidentiality, which facilitates frank evaluation of performance.

The principal objective of **Phase 1** is to evaluate whether the legal texts through which participants implement the Convention meet the standard set by the Convention as well as initial actions to implement the Recommendation. It provides an opportunity for countries to learn from the experiences and approaches of others.

The evaluation of performance is the work of the entire Group of peers.

The Phase 1 mutual evaluation will include:

- Preparation of the consultation in the Working Group, including reply to a questionnaire by the examined country and preparation of a provisional report on the country's performance;
- Consultation in the Working Group;
- Adoption of a report on the examined country's performance.

Because peer review is an intergovernmental process, business and civil society groups would not be invited to participate in the formal evaluation process, in particular, in the consultation in the Working Group.

The purpose of **Phase 2** is to study the structures put in place to enforce the laws and rules implementing the Convention and to assess their application in practice. Phase 2 shall also serve an educational function as participants discuss problems and different approaches.

The elements in Phase 2 Evaluation are the following:

- Replies to a questionnaire;
- On-site visits to country examined;
- Preparation of a preliminary report on country performance;
- Consultation in the Working Group;
- Adoption by the Working Group of a report, including an evaluation, on country performance;
- Transmission to the OECD Council.

*b) The African Peer Review Mechanism (APRM) of the New Partnership for Africa's Development (NEPAD)*

The African Peer Review Mechanism (APRM) is an instrument voluntarily acceded to by Member States of the African Union as an African self-monitoring mechanism.

The mandate of the APRM is to ensure that the policies and practices of participating states conform to the agreed political, economic and corporate governance values, codes and standards contained in the Declaration on Democracy, Political, Economic and Corporate Governance. The APRM is the mutually agreed instrument for self-monitoring by the participating member governments.

The primary purpose of the APRM is to foster the adoption of policies, standards and practices that lead to political stability, high economic growth, sustainable development and accelerated sub-regional and continental economic integration through sharing of experiences and reinforcement of successful and best practice, including identifying deficiencies and assessing the needs for capacity building.

The operations of the APRM be directed and managed by a Panel of between 5 and 7 of so-called Eminent Persons.

The Panel will exercise the oversight function over the review process, in particular to ensure the integrity of the process.

The Secretariat may engage, with the approval of the Panel, the services of African experts and institutions that it considers competent and appropriate to act as its agents in the peer review process.

The Panel will be supported by a competent Secretariat that has both the technical capacity to undertake the analytical work that underpins the peer review process and also conforms to the principles of the APRM. The functions of the Secretariat will include; maintaining extensive database information on political and economic developments in all participating countries, preparation of background documents for the Peer Review Teams, proposing performance indicators and tracking performance of individual countries.

The APRM process is formed of various stages.

Stage One will involve a study of the political, economic and corporate governance and development environment in the country to be reviewed, based principally on up-to-date background documentation prepared by the APRM Secretariat and material provided by national, sub-regional, regional and international institutions.

In Stage Two, the Review Team will visit the country concerned where its priority order of business will be to carry out the widest possible range of consultations with the Government, officials, political parties, parliamentarians and representatives of civil society organizations (including the media, academia, trade unions, business, professional bodies).

Third stage is the drafting of the Country Report that will need to be clear on a number of points in instances where problems are identified. Is there the will on the part of the Government to take the necessary decisions and measures to put right what is identified to be amiss? What resources are necessary to take corrective measures? How much of these can the Government itself provide and how much is to come from external sources?

If the Government of the country in question shows a demonstrable will to rectify the identified shortcomings, then it will be incumbent upon participating Governments to provide what

assistance they can, as well as to urge donor governments and agencies also to come to the assistance of the country reviewed.

In order to strengthen political governance, the leadership of NEPAD have undertaken a process of targeted capacity-building initiatives. These institutional reforms will focus, among other, on:

- Administrative and civil services;
- Strengthening parliamentary oversight;
- Promoting participatory decision-making;
- Adopting effective measures to combat corruption and embezzlement.

NEPAD reiterated its commitment to work on fighting corruption, issue that has been incorporated in the APRM process notwithstanding possible difficulties inherent to it.

#### *c) The Group of States against Corruption (GRECO)*

The GRECO was conceived as a flexible and efficient follow-up mechanism, called to monitor, through a process of mutual evaluation and peer pressure, the observance of the Guiding Principles in the Fight against Corruption and the implementation of international legal instruments adopted in pursuance of the Programme of Action against Corruption. Full membership of the GRECO is reserved to those who participate fully in the mutual evaluation process and accept to be evaluated.

According to its Statute, the aim of the GRECO is to improve its members' capacity to fight corruption by monitoring the compliance of States with their undertakings in this field. In this way, it will contribute to identifying deficiencies and insufficiencies of national mechanisms against corruption, and to prompting the necessary legislative, institutional and practical reforms in order to better prevent and combat corruption.

GRECO is responsible, in particular, for monitoring observance of the Guiding Principles for the Fight against Corruption and implementation of the international legal instruments adopted in pursuit of the Programme of Action against Corruption (PAC). So far three such instruments have been adopted, the Criminal Law Convention on corruption, the Civil Law Convention on corruption and the Recommendation on codes of conduct for public officials. The evaluation procedures of GRECO are described in detail in Articles 10 to 16 of its Statute and in Title II of its Rules of Procedure. Ad hoc teams of experts are appointed, on the basis of the list of experts proposed by the GRECO members, to evaluate each member in each evaluation round. Evaluation teams are the corner-stone of the GRECO procedure, within which they play an essential role. In particular, evaluation teams examine replies to questionnaires, request and examine additional information to be submitted either orally or in writing, visit member countries for the purpose of seeking additional information of relevance to the evaluation, and prepare draft evaluation reports for discussion and adoption at the plenary sessions.

GRECO approves the questionnaire for each evaluation round. It decides on the composition of the teams responsible for conducting the evaluation and invites them to analyse the replies to the questionnaire provided by the member under evaluation.

#### *d) United Nations Convention*

The UN Convention does not contain any express provision of any monitoring arrangement. However, following its entry into force, a Conference of the States Parties to agree upon activities, procedures and methods of work to achieve the objectives of the Convention shall be convened. These include mobilisation of voluntary contributions. Thus the Convention provides the possibility of an international institutional framework for assessing needs and coordinating development assistance in the field of anti-corruption.

In addition, the UN Convention sets out an agreed framework for providing support to developing countries to enhance their anti-corruption efforts. It specifically includes a chapter on technical assistance and information exchange. This covers a range of issues, including (i) building capacity in the development and planning of strategic anti-corruption policy, (ii)

training competent authorities in the preparation of requests for mutual legal assistance, and (iii) activities relating to prevention of transfer of illicit proceeds.

Still unclear is how much follow-up there will be under the Convention and of what nature. The aforementioned provision for a Conference of the States Parties (the states that have ratified the Convention) also calls for them to agree upon activities, procedures and methods of work in order to achieve periodic review of the implementation of the Convention. It specifically requires States Party to provide the Conference with information on its programmes, plans and practices, as well as on legislative and administrative measures to implement the Convention. It provides for the Conference of the States Parties to examine the most effective way of receiving and acting upon information.

In principle, the UN Convention offers the opportunity for consolidated reporting and review of country progress. Moreover, donor countries are held accountable in the same way as recipient countries. However, for this kind of review to occur effectively, it will be necessary to develop procedures, to be decided on by the Conference of States Parties. The effectiveness of the Convention will depend on whether the States Parties shall succeed in developing an effective implementation mechanism. Donor governments have a role to play in the negotiation, establishment and funding of such an implementation mechanism. Further, as it also results from the above APRM analysis, donor assistance may also be needed by developing countries in order to enable them to participate in monitoring.

#### *e) African Union Convention*

Contrary to the UN Convention, the AU Convention does include monitoring arrangements.

The follow-up mechanism provided for in Art. 22 calls for an Advisory Board of eleven members elected by the AU Executive Council, serving for a period of two years, renewable once. The Board has broad responsibilities for promoting anti-corruption work, collecting information on corruption and on the behaviour of multinational corporations operating in Africa, developing methodologies, advising governments, developing codes of conduct for public officials, and building partnerships. In addition it is required to submit a report to the Executive Council on a regular basis on the progress made by each State Party in complying with the provisions of the AU Convention. At the same time, States Parties are required to report to the Board on their progress in implementing the AU Convention within a year after the coming into force of the AU Convention and thereafter on an annual basis through reports by national anti-corruption authorities to the Board. Further, States Parties are required to ensure and provide for the participation of civil society in the monitoring process.

### **3) Conclusions**

#### *a) Donor support to monitoring mechanisms*

The UN Convention, OECD Convention, African Union Convention and Council of Europe Conventions and the Asia Pacific Action Plan all provide for follow-up mechanisms. In the case of the OECD, OAS and Council of Europe Conventions there are monitoring systems already in place and functioning.

The Asia Pacific Action Plan successfully introduced a self-assessment process in 2003 which is likely to be made more rigorous and broadened in its scope. The UN Convention and AU Convention systems still require elaboration. Donor support is needed to ensure that monitoring functions well under all the Conventions.

The utmost importance of monitoring (or peer review processes) has been clearly outlined. Donors shall contribute to the development of monitoring system that is credible, sustainable and cost effective (see the recommendations of OECD-DAC meeting of 9-10 December 2004 on Improving Donor Effectiveness in Combating Corruption).

In this respect, the frameworks provided by the various Conventions are very useful for reviewing country progress and determining focal areas for anti-corruption programmes in both donor and recipient countries, drawing on the reports prepared. Particular attention and efforts shall be devoted to the strengthening of NEPAD-APRM.

(i) But **review mechanisms** (existing or still to be implemented) **need to be adequately resourced**. Existing monitoring systems are not always provided adequate resources by participating governments for the secretariat that is servicing the reviews. This holds true even for monitoring mechanisms based on international instruments, since it is not always evident that the Secretariats of the organisations concerned have the necessary resources to ensure effective support and analysis of these mechanisms.

(ii) There is a strong **need to build and maintain the capacity of (a) monitoring bodies; (b) governments being reviewed and (c) NGOs and other entities** monitoring outside review processes.

It is important that civil society organisations maintain pressure for well-functioning intergovernmental monitoring systems and feed their independent evaluations into the intergovernmental reviews. Moreover, civil society organisations should also carry out their own monitoring additional to intergovernmental reviews.

Peer practitioners, experts, evaluators must be adequately trained and educated to make them fully aware of the problems linked to both the procedures and the substance of evaluations, also with the aim to achieve greater harmonisation of evaluation techniques.

Assistance may be also provided in order to develop draft manual, guidelines or toolkits for evaluators, for example under the APRM.

Moreover, the possibility to grant support for the establishing of regional and sub-regional networks of anti-corruption peer review practitioners to facilitate the exchange of experience and the creation of knowledge centers shall be explored.

(iii) **Monitoring exercises cannot be separated from the issue of technical assistance**. It is often the case that participating countries agree on the need for implementing the measures identified as "best practices", but lack financial, human or technical resources to implement them. Under those circumstances, monitoring exercises would be much more effective if they were accompanied by targeted assistance programmes.

*b) The link between NEPAD APRM and the implementation of UN and AU Conventions*

An additional and emerging problem is the fact that an increasing number of countries are covered by multiple Conventions and may be subject to multiple review processes. Of course, where there are multiple mechanisms applicable to the same region, the challenge arises as to how to avoid duplication of effort and wasting of resources, as for example for the OECD Convention and the GRECO mechanism.

As far Africa is concerned, **links are to be established between NEPAD APRM in the area of anti-corruption and the implementation (later including monitoring) of both the UN Convention and the AU Convention in order to develop potential synergies and avoid duplication of efforts**.

This may result in a major initiative in the area of anti-corruption technical assistance and capacity building in Africa: it has to be taken into consideration that both NEPAD APRM and AU Convention are instruments established within the African Union; therefore, their joint development (at least for anti-corruption) under a common umbrella shall be definitely encouraged and supported.

To this aim, the possibility of organizing a conference at the continental level bringing together at least all African countries that have ratified the UN Convention and/or the AU Convention shall be envisaged.

We should always bear in mind that the above eventual scheme should certainly stimulate the ratification process, and the subsequent entry into force of the two Conventions.

### III. BUILDING INSTITUTIONAL STATE REFORM AND TARGETING CIVIL SOCIETY AND BUSINESS SECTOR

---

#### A. Technical assistance and capacity building for institutional state reform

As previously explained at length, technical assistance and capacity building to facilitate implementation of relevant legislation improve regulatory capabilities and state administrations, empower states to develop national anti-corruption policies, and strengthen enforcement authorities, which nowadays are all essential components of anti-corruption strategies and programs.

Having said that, specific areas of intervention that need to be addressed and for which support should be sought from the donor community include:

- Budget controls and financial management
- Procurement
- Political party funding and electoral process (election law, etc)
- Asset recovery
- Access to information
- Regulation of private sector, particularly for corporate governance, compliance, and competition
- Enhancement of rule of law and judicial reform

##### 1) Budget controls and financial management

The promotion of sound financial management and accountable and transparent government contribute to both preventing and detecting corrupt practices.

Regular monitoring and oversight are essential to ensure the integrity of the public administration.

It is generally deemed that effective oversight requires outside scrutiny, among others by independent audit institutions.

Specific assistance should be provided to create, strengthen or develop the above audit institutions, with the eventual additional goal to building centres of excellence for a long term commitment. Focused attention to a specific area over several years can prove to be effective in creating institutional change in the fight against corruption. These targeted actions in turn may increase confidence among donors and the public, and generating momentum for further action in other sectors.

##### 2) Procurement

Public procurement is an especially corruption-prone area. However, it appears that the focus is generally placed on the improvement of the efficiency of procurement mechanisms without the aim to specifically address corruption.

To keep corruption at bay, procurement systems must be based on transparency, competition and objective criteria in decision making. Reform of public procurement procedures has been widely identified as a priority. Most countries have enacted statutes governing public procurement, issued procurement guidelines and tasked a particular government division *inter alia* to monitor and evaluate government procurement processes. Current reform efforts focus primarily on introducing procurement via the internet (e-procurement).

Another current field of reform is the standardization and centralization of public procurement. A connected area of intervention for technical assistance is the enhancement of integrity and competence of public officials, through *inter alia* the enactment of codes of conduct.

Another issue is the remuneration of public officials.

##### 3) Political party funding and electoral process

Political corruption and the financing of political parties are complex and sensitive issues to be addressed by donors but may be extremely rewarding in terms of building public confidence

and trust towards the political system. However, proposed solutions should be strictly connected to an in-depth analysis of the local situation and context.

A related issue is the financing of electoral campaigns, generally ruled in the framework of election law.

Said areas are extremely important since they affect legitimacy and credibility of political leaders, who are expected to express the political will and commitment to fight corruption: there is a strong need to avoid general disillusionment and cynicism, in particular if top-bottom approach are implemented.

Moreover, the relationships between democracy and corruption certainly require further study and assessment.

#### 4) Asset recovery

One specific problem affecting Africa particularly severely is the illicit acquisition of public assets. The scale of the problem is huge: an EC report estimates that stolen African assets equivalent to more than half of the continent's external debt are held in foreign bank accounts.

It is undisputable that today the repatriation of proceeds of corruption is really very difficult, expensive and slow.

As emerged during a meeting of OECD-DAC Working Group on asset recovery, the following actions are recommended:

- (i) the process of peer review have to be encouraged and strengthened in this area;
- (ii) the involved States should be helped in obtaining the right professional assistance and advice;
- (iii) the donor community should provide:
  - technical assistance and training so that officials of partner countries develop the necessary skills and understanding as well as assistance in drafting legislation and rules;
  - contribution in donating money to pay the fees of international experts.

It is obvious to state that in this peculiar area the implementation of the UN Convention would be of a decisive importance.

Additional areas to be addressed at national level include: introducing measures to prevent the theft of assets at source; improving systems to identify funds that have been acquired illicitly; facilitating the authorities' power to freeze and confiscate assets while further investigations are carried out; and creating instruments to hand back funds to the jurisdiction from which they were looted. Failure by African governments to recover stolen assets has resulted from obstacles in each of these areas, so all need to be addressed.

#### 5) Access to information

The public plays a specific role in the fight against corruption which is to monitor and scrutinize actors and hold them accountable. This scrutiny is a powerful means of preventing corruption and a key supplement to legal provisions and institutions.

A particularly important precondition for enabling citizens to scrutinize public administration, government, political parties and elected politicians is a meaningful right to access information. However, it is only recently that a number of countries have implemented such reforms, oftentimes triggered and supported by civil society actors. Reluctance to grant freedom of information is still widespread, justified by state security, privacy or tradition.

It is generally considered that access to information goes beyond routine publication of documents; effective control also requires that governmental or administrative institutions disclose files for scrutiny upon request.

Specific assistance may be provided in helping establishing the legal instruments granting citizens' access to information and granting and ruling the freedom of information.

6) Regulation of private sector, particularly for corporate governance, compliance, and competition.

Approaches to curbing corruption in this sector may follow the principles of enforcement and partnership. On one side, governments impose standards for company management, transparency rules, reporting obligations and auditing requirements; on the other side, they provide for effective supervision and mechanisms to enforce compliance with these rules.

Equally important, on the other hand, are governments' efforts to foster and strengthen the private sector's own initiatives to enhance internal control mechanisms and to establish and promote corporate ethics and compliance systems.

Most developing countries need to enact regulations governing corporate accounting, internal controls and disclosure of relevant information. Many countries have not yet established such regulations and supervisory measures which have to be in line with relevant international standards on accounting and disclosure, such as those developed by the International Accounting Standards Board.

It is recommended to support recommend possible improvements in corporate governance, financial reporting and improved transparency.

Efforts primarily address internal control and accountability mechanisms and aim at improving the veracity of companies' books and records.

Another material area is the regulation and supervision of financial institutions and their practices which is an important means of preventing and detecting corruption, especially at high levels.

Assistance and capacity building support may be provided in helping establishing specialized supervisory bodies. Again, international cooperation and mutual assistance foster the adoption of common standards.

Business actors themselves have increasingly come to understand their vital interest and role in fighting and eradicating corruption. Bribery, indeed, also runs counter to the long-term interest of business, because it increases costs and risks, undermines efficiency, lowers country credit rankings, and deters investors.

Some private sector companies recognize that responsibility for preventing corruption in business resides primarily with company management. They have thus tried to develop and implement compliance programs to complement the compulsory standards imposed and enforced by the respective countries' authorities.

Private companies should be encouraged to develop and implement compliance programs, including company codes of conduct, ethics training and the establishment of specialized compliance and ethics departments.

To this aim, joint actions with the UN Global Compact and its Tenth Principle on Corruption shall be carried on.

Addressing the supply side of corruption also in developing countries shall be part of any anti-corruption strategies.

#### 7) Enhancement of rule of law and judicial reform

Said topic has been previously discussed in Chapter I.

## **B. Targeted support for civil society and the business sector**

1) The contributions made by civil society organisations to international anti-corruption efforts may be of two types.

First, civil society organisations take part in the development and in the management of the anti-corruption initiatives themselves.

For instance, Transparency International and another international NGO, the Open Society Institute, were part of the international coalition that created in 1998 the Anti-Corruption Network for Transition Economies. Representatives from civil society (Transparency International) and regional business organisations (the Pacific Basin Economic Council) constitute, together with representatives of the donor community, an Advisory Group to the Asia-Pacific Initiative. As such, they are members of the Action Plan Steering Group and play a consultative role on the national anti-corruption efforts undertaken in the framework of the Action Plan.

Second, civil society is involved in the implementation of some activities.

For instance, for the ACN Donors' Standards for Anti-Corruption Assistance Project, civil society actors are closely involved in the collection and analysis of information.

However, there are limits to contribution by civil society to anti-corruption efforts.

Civil society is more or less developed from one country to another, and its involvement in the fight against corruption can be more or less important.

Several factors can be identified as limiting the development of civil society and its involvement in the fight against corruption. Limits may come from the State. In certain countries, public rules limit basic civil rights and do not facilitate the development of civil society organisations. The lack of transparency of public operations and difficult access to information do not encourage the direct participation of citizens in the conduct of public affairs. This participation is not perceived as a normal component of political life. Citizens may also impose limits. In certain countries, citizens are not sufficiently aware of the costs of corruption, and/or of the existence of tools and methods to curb this phenomenon. Citizens do not always make the link between some positive objectives they may have for their personal life or professional activity (for instance access to quality health services) and the fight against corruption. They do not see how they could contribute.

Limits may also come from a lack of resources. The fight against corruption is a relatively new area compared to other issues traditionally addressed by non-governmental organisations. Therefore civic actors do not always have the information, experience or technical capacities required for an efficient action. Financial resources are also often a problem.

2) Therefore, to strengthen civil society's contribution to anti-corruption efforts is a material issue.

Several lines of action may be identified, among others:

(i) to encourage an institutional environment conducive to the development of civil society and to its participation in public affairs by promoting freedom of the media to develop free public scrutiny and enacting legislation facilitating the setting up of civil society organisations;

(ii) to promote the co-operation of public and civil society actors in anti-corruption efforts through effective public-private partnership;

(iii) to develop public awareness and encourage a broad mobilisation against corruption; and

(iv) to strengthen the capacities of civil society organisations by providing information, expertise, training programmes and contributing to fund raising.

Other more specific and focused initiatives should include:

- support and technical assistance for civil society organisations budget monitoring, monitoring of judiciary, police, public procurement, public officials asset disclosure;
- support for national and global networking activities and to participation to meetings;
- support for the creation of small centers of legal assistance, helping citizens wishing to introduce cases on corruption offences on *pro bono* basis.

In addition, donors should deepen their concepts of civil society and civil society mobilization and adopt a more pluralistic understanding of civil society.

In order to achieve effective mobilization, they should include representatives of civil society that so far have been neglected such as trade unions, lawyers and professional lawyers associations, business associations.

They must be addressed broadening the scope of assistance and support to include rule of law promotion generically.

### 3) The Business Sector

There is a widely acknowledged strong need for an effective involvement of the private sector in anti-corruption efforts: the private sector is at the same time victim of corruption and represents the supply side of corruption.

Enterprises ask for a solid legal framework nationally and internationally.

Over and above this need for a basic legal framework, corporations recognize the need for voluntary compliance.

Corporate social responsibility has made the enterprises aware that they must play a role as a participant in society, over and above the mere legal norms (initiatives such as UN Global Compact are extremely valuable in respect thereto).

Internal codes do not suffice, there must be a continuous flow of information, training and implementation, to be supported by the international donor community.

In this context, it is of the utmost importance to target all companies.

Voluntary schemes are easier to put in place in the context of large multinational enterprises, rather than in smaller entities

Still, smaller entities face incredible competition and have less resource to resist all forms of solicitation of bribes.

In developing countries, the problem is all the more important, specifically in Africa.

Larger companies can also help by promoting anti-corruption efforts among their business partners and in their supply chains.

## IV. PLAN OF ACTIONS

---

### A. Implementation of UN, AU and OECD Conventions

1) Strong support to prompt ratification and implementation of UN Convention and AU Convention through technical assistance and capacity building to developing countries in order to:

(i) raise awareness about the importance of Conventions among parliamentarians, affected members of the executive branch, private sector and civil society, thus providing information materials, supporting the organisation of workshops on the Conventions or particular aspects of them;

(ii) assess legislative changes required to comply with Conventions provisions and the consistency of existing legislation;

(iii) assess the kinds of institutional reform needed to comply with Convention standards, including assessment of the resources needed and provide assistance in order to align enforcement authorities with the objectives of the Conventions;

(iv) provide assistance to Secretariat/Advisory Council of African Union to develop a legislative guide for African Union Convention implementation and to explore the development of other appropriate implementation tools;

(v) assist African countries to prepare national action plans aimed to UN and AU Conventions implementation;

(vi) provide support and enhance local capacity in order to develop national anti-corruption strategies and plans of action, based on the extensive participation of stakeholders from state and civil society, strategies and plans of action to be preceded by national surveys to be equally supported;

(vii) promote harmonized approach to implementation of domestic anti-corruption laws.

2) Link between NEPAD APRM and implementation of UN and AU Conventions

a) Through a major initiative at African level donors should provide assistance and support to establish and develop links and synergies between NEPAD APRM in the area of anti-corruption and the implementation (later including monitoring) of both the UN Convention and the AU Convention in order to value resources and avoid duplication of efforts.

To this aim a conference at continental level should be organized bringing together at least all African countries that have ratified the UN Convention and/or the AU Convention as well as international institutions and donors.

b) Donor support to APRM and future AU Convention monitoring through:

(i) provision of adequate resources;

(ii) building and maintaining the capacity of (a) monitoring bodies; (b) governments being reviewed and (c) NGOs and other entities monitoring outside review processes;

(iii) adequate training and education of peer practitioners, experts, evaluators make them fully aware of the problems linked to both the procedures and the substance of evaluations, also with the aim to achieve greater harmonisation of evaluation techniques;

(iv) providing assistance in order to develop draft manual, guidelines or toolkits for evaluators;

(v) granting support to the establishing of regional and sub-regional networks of anti-corruption peer review practitioners to facilitate the exchange of experience and the creation of knowledge centers.

### 3) Enforcement of OECD Convention through:

(i) support to accession by non-OECD countries;

(ii) support to efforts to enforce prohibitions of foreign bribery by providing training in developing countries about the OECD Convention, particularly training for law enforcement officials, but also for business and civil society organisations and the media to address supply side of corruption;

(iii) assistance to develop reporting channels to enable those in developing countries to report alleged foreign bribery in their country, and work with developing countries on mutual legal assistance, including the provision of legal advisory services.

## **B. Building Institutional State Reform and Targeted Support to Civil Society and Business Sector**

### 1) Technical assistance and capacity building for institutional state reform in the following areas:

- (i) Budget controls and financial management: creation, strengthening or development of independent audit institutions;
- (ii) Procurement: e-procurement and integrity and competence of public officials;
- (iii) Political party funding and electoral process;
- (iv) Asset recovery: the following actions are recommended:
  - the process of peer review have to be encouraged and strengthened;
  - States should be helped in obtaining the right professional assistance and advice;
  - the donor community should provide technical assistance and training so that officials of partner countries develop the necessary skills and understanding as well as assistance in drafting legislation and rules;
- (v) Access to information: specific assistance may be provided in helping establishing the legal instruments granting citizens' access to information and granting and ruling the freedom of information
- (vi) Regulation of private sector, particularly for corporate governance, compliance, and competition: to support possible improvements in corporate governance, financial reporting and improved transparency; to develop regulation and supervision of financial institutions; to provide assistance and capacity building support in helping establishing specialized supervisory bodies; to encourage private companies to develop and implement compliance programs, including company codes of conduct, ethics training and the establishment of specialized compliance and ethics departments;
- (vii) Enhancement of rule of law and judicial reform.

### 2) Targeting civil society and the business sector by providing:

- support and technical assistance for civil society organisations budget monitoring, monitoring of judiciary, police, public procurement, public officials asset disclosure;
- support for national and global networking activities and to participation to related meetings;
- support for the creation of small centers of legal assistance, helping citizens wishing to introduce cases on corruption offences on pro bono basis; and
- specific support to trade unions, lawyers and professional lawyers associations and business associations.