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**Ethics, Integrity, and Accountability in the Public Sector:
RE-BUILDING TRUST IN GOVERNMENT
Through Implementation of the United Nations Convention against Corruption**

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Report of the Experts Group Meeting

on

**Ethics, Integrity, and Accountability in the Public Sector:
RE-BUILDING TRUST IN GOVERNMENT
Through Implementation of the United Nations Convention against Corruption**

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PREFACE

Evidence of declining public trust has been seen for sometime in declining voter turn-outs, the growing appeal of populist and extremist ideologies in some regions, and above all in negative perceptions of the government as an institution prone to corruption. Rebuilding trust is critical to Member States in improving governance and public administration and countering corruption. There are many reasons to *re-build* trust in government. But foremost among them is that citizens, armed with increasing and better information, are demanding higher standards of ethics, integrity, transparency and accountability from their governments. As a result, many countries are confronted with a major challenge of how to stem the steady decline in public trust and reconnect the citizen with the government.

In 2000, the General Assembly recognized that a comprehensive, effective international legal instrument against corruption was desirable, as part of the process of rebuilding trust in government. It called for such an instrument, the *United Nations Convention against Corruption*, the negotiations of which was facilitated by the United Nations Office for Drugs and Crime and completed in 2003. The objectives of the *Convention* include “promoting integrity, accountability, and proper management of public affairs and property” among others.

Recognizing the usefulness of the *Convention* in re-building public trust, the United Nations Department of Economic and Social Affairs (UN DESA), through the Division for Public Administration and Development Management (DPADM), organized an Ad Hoc Expert Group Meeting on *Ethics, Integrity and Accountability in the Public Sector: Rebuilding Trust in Government through the implementation of the UN Convention against Corruption* on 26-27 September 2006 in St. Petersburg, the Russian Federation. UN DESA organized the event in collaboration with Inter-Parliamentary Assembly for CIS (IACIS), United Nations Office for Drugs and Crime (UN ODC) and the Network of Institutes and Schools of Public Administration in Central and Eastern Europe (NISPAcee).

By ratifying the *Convention*, countries demonstrate a level of willingness to fight corruption. Effectively implementing the provisions of the Convention would greatly contribute to the building of trust in government that has been eroded by unseemly conduct on the part of public officials and their clients. However, it is one thing to adopt a convention and another to build effective preventive capacities for its implementation. Many countries, especially the developing countries, are constrained by capacity weaknesses. The public sector, which is expected to lead in the anti-corruption battle, may be short of qualified and adequately motivated personnel. Or other serious institutional capacity deficiencies may impede progress. In such cases, institutional and human capacity building then becomes a critical issue in the implementation of the *United Nations Convention against Corruption* and in rebuilding trust in government.

The overriding question is “what are the specific measures needed to strengthen the preventive capacity of the institutions that would support the implementation of the *Convention*?” Based on the deliberations on these questions, the Meeting resulted in the following proposals and materials:

- Inputs into a working draft of the UN ODC-sponsored Technical Guide for the implementation of the *UN Convention against Corruption*, reviewed by State Parties,
- Proposals on the provision of advisory services, design and conduct of training of trainers’ programmes, and institutional networking, and
- A policy brief on a selected preventive measure in implementing the Convention: designing and enforcing codes of conduct.

Through reporting on the deliberations and outputs of the Ad Hoc Expert Group Meeting, this report captures the exchange of views and practical experiences on improving integrity, transparency and accountability in the public sector, among key stakeholders from developing countries and countries with economies in transition, to re-build trust in government.

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PART A

Meeting Report

on

**Ethics, Integrity, and Accountability in the Public Sector:
RE-BUILDING TRUST IN GOVERNMENT
Through Implementation of the United Nations Convention against Corruption**

A. Introduction

The United Nations Department of Economic and Social Affairs (DESA) organized a two-day Expert Group Meeting on *Ethics, Integrity and Accountability in the Public Sector: Rebuilding Trust in Government through the Implementation of the UN Convention against Corruption* from 26 to 27 September 2006. More than 30¹ experts and observers discussed how the preventive provisions of the Convention – such as anti-corruption commissions, codes of conduct and sound public assets management – can contribute to rebuilding trust in government. Overall, they agreed that the United Nations can play a valuable role through disseminating good practices, issuing guidelines, training and building a network of middle-level managers, and supporting research into the corruption risks in managing public property. The deliberations of this Meeting were fed into the discussions of the Regional Forum which followed the expert group meeting and addressed the same topic.

B. Background and context

Over the past three to four decades, governments in different parts of the world have instituted a variety of measures aimed at reforming and revitalizing the public sector. They have done so to respond to the demands for changes, unleashed by the forces of globalization, democratization and liberalization among others. These measures include re-defining the role and sharpening the focus of government, enhancing the service delivery capacities of public agencies, incorporating private business ethos and techniques in decision-making processes, applying modern information and communication technologies in public management processes, reviewing procurement and financial management systems with a view to promoting transparency and accountability, and investing in human and institutional capacity-building.

Notwithstanding the progress made towards modernizing and revitalizing the public sector in both the developed and the developing regions, many countries are still confronted with a major challenge – that is, how to stem the steady decline in public trust and reconnect the citizen with the government. Evidence of the decline in public trust is not far to seek – declining voter turn-outs at general and mid-term elections, growing appeal of populist and extremist ideologies, and, in some quarters, increasingly negative perception of public sector agencies.

In today's environment of rapid change and uncertainties, issues of ethics, integrity and accountability may become secondary to that of personal survival on the part of many public agents. When governments are asked to do more with less and focus more on the ends than the means, much pressure may be put on public servants. In cases of extreme conditions, such as post-conflict settings, the situation is made even more critical. For example, whatever is left of the police force cannot be trusted to protect every person's life and property, for the simple reason that the force has either ceased to exist or has come under the influence of a group or groups with scores to settle. In effect, therefore,

¹ See Annex for a list.

the preoccupation with survival in a post-conflict environment erodes the citizen's confidence in government, promotes self-interest and may give racketeering free rein to undue influence.

The tendency to “switch off” government by citizens will increase where malfeasance in high places and impunity receive full press coverage, and reports of corrective actions are few and far in between. Fortunately, measures to combat corruption are receiving increasing attention in different parts of the world today. This is indeed the context in which the ad hoc Expert Group Meeting was organized – that is, against the backdrop of the complex challenges facing the developed and the developing countries in combating official corruption and promoting “clean” government.

C. Mandate

In its resolution 55/61 of December 4, 2000, the General Assembly of the United Nations recognized that an effective international legal instrument against corruption, independent of the *United Nations Convention Against Transnational Organized Crime* (resolution 55/25, annex I), was desirable. The General Assembly decided to establish an Ad Hoc Committee for the negotiation of such an instrument in Vienna, Austria at the headquarters of the Centre for International Crime Prevention, Office for Drugs and Crime. The text of the *United Nations Convention against Corruption* was negotiated during seven sessions held between 21 January 2002 and 1 October 2003. The *Convention*, approved by the Ad Hoc Committee, was adopted by the General Assembly by resolution 58/4 of 31 October 2003.

The objectives of the *United Nations Convention against Corruption* are: (i) to promote and strengthen measures to prevent and combat corruption more efficiently and effectively, (ii) to promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery, and (iii) to promote integrity, accountability, and proper management of public affairs and property.

Among other actions, the *Convention* calls upon governments to:

- Adopt preventive anti-corruption policies and practices,
- Establish and operate preventive anti-corruption body or bodies,
- Establish and enforce codes of conduct for public officials,
- Establish and operate appropriate systems of public procurement and management of public finances based on transparency, competition and objective criteria,
- Establish public reporting mechanisms, and
- Promote active participation of society in the prevention of and fight against corruption.

By acceding to the *United Nations Convention*, countries demonstrate a level of willingness to fight corruption. Effectively implementing the provisions of the

Convention would greatly contribute to the building of trust in government that has been eroded by unseemly conduct on the part of some public officials and their clients.

However, it is one thing to adopt a convention and another to build and effectively utilize the appropriate enforcement and monitoring capacities for its implementation. Many countries, especially the developing countries, are constrained by capacity weaknesses. The public sector, which is expected to provide the lead in the anti-corruption battle, is often short of qualified and adequately motivated personnel – this is over and above the institutional capacity deficiencies that are now generally well-known.

D. Objectives of the Experts Group Meeting

The underlying goal of the Expert Group Meeting was to enable the experts to arrive at some recommendations concerning the effective implementation of the *United Nations Convention against Corruption* as one of the ways of rebuilding public trust in government. The materials gathered during the Meeting were to be analyzed and formulated into practical tools that can contribute to the design of various systems and institutional capacity-building mechanism for the effective fight against corruption, including the implementation of the *United Nations Convention against Corruption*.

At the conclusion of the Meeting, the experts submitted proposals on the development of appropriate tools and methodologies for the implementation of the *United Nations Convention against Corruption*. Such input were included and reflected in the *Technical Guide to the Convention* that was finalized by the United Nations Office of Drugs and Crime. In addition, proposals for various follow-up meetings and projects were explored and in some cases developed. Moreover, the material presented at the Working Groups of the Meeting was reviewed and some selected to form the basis for producing a policy brief on the theme: *Designing and Enforcing Codes of Conduct*.

The specific objectives of the Meeting were to:

- Provide a forum at which the experts could exchange ideas and experiences on the implementation of pre-emptive and ameliorative anti-corruption measures and the risks as well as prospects in transferring anti-corruption practices from one culture to another;
- Enable the experts to deliberate on preventive measures that need to be adopted to strengthen corruption pre-empting capacities, highlighted in the *United Nations Convention*;
- Focus the experts' attention on specifying the various roles of governance actors in the design, implementation, and monitoring of corruption prevention and follow-up anti-corruption measures; and
- Facilitate the experts to reach an understanding on the strategies to adopt and the tools to develop to ensure that State Parties effectively mainstream and successfully implement the *United Nations Convention against Corruption*.

E. Thematic Focus of the EGM

The themes which formed the fulcrum of the presentations and discussions of the Meeting by resource persons and experts were:

- Implementing the *United Nations Convention against Corruption*:
 - Ethics, Integrity Accountability and the Fight Against Corruption in Latin America: Challenges and Perspectives of Implementing the United Nations Convention;
 - Implementing the United Nations Convention Against Corruption in Developed Countries;
 - Implementing the United Nations Convention Against Corruption: Challenges and Perspectives from Asian Countries;
 - Ethics, Integrity Accountability and the Fight Against Corruption in Africa: Challenges and Perspectives of Implementing the United Nations Convention; and
 - Ethics, Integrity Accountability and the Fight Against Corruption in Central and Eastern Europe and CIS countries: Challenges and Perspectives of Implementing the United Nations Convention.

- Public Sector Institutional Instruments for Preventing and Fighting Corruption:
 - Structural, Functional and Behavioral Attributes of a Successful Preventive Anti-Corruption Body: Elements of a Preventive Anti-Corruption Model for the Public Service;
 - Designing and Enforcing Codes of Conduct for Public Officials;
 - Building an Effective Anti-Corruption Commission;
 - Effective, Transparent and Accountable System of Public Procurement; and
 - The Role of Audit in Fighting Corruption.

F. Experts²

Representatives of a number of prominent organizations, both regional and international, came together to engage in the Ad Hoc Expert Group Meeting. The core of these was composed of the United Nations Department of Economic and Social Affairs (UNDESA), the United Office on Drugs and Crime (UNODC) and the Network of Institutes and Schools of Public Administration in Central and Eastern Europe (NISPAcee). Others who joined included the United Nations Ethics Office, the Organization for Economic Cooperation and Development (OECD), Transparency International (TI), and the United States Agency for International Development (USAID). Also numerous experts from different regions, including developing countries, joined the meeting.

² See Annex for a list.

G. Recommendations and Conclusions

After two days of deliberation, the experts raised the following issues and drew the following conclusions:

- How can global norms (such as the provisions of the *United Nations Convention against Corruption*) be best translated into national norms?
- How can conflicts of interest of public servants also working in the private sector be regulated and what changes need to be made in the existing disclosure of assets programmes?
- Can transparency be legislated? What provisions are needed in freedom of information laws to make them more effective?
- How can social controls be used in the fight against corruption? What supplementary mechanisms of formal audit, focusing on outcomes, can be employed?
- How best can anti-corruption measures from central to local levels trickle down or devolve?
- How can political and administrative anti-corruption measures be continued, especially in the face of transition of power?
- There is a need to harmonize various laws relevant to fighting corruption.
- The independence of anti-corruption commissions is also important, particularly as guaranteed by their reporting relationship.
- Public procurement is a big area of focus in preventing and fighting corruption.
- In some instances, there is interference from procurement on development aid. Procurement policies may need to be reviewed for simplification of accountability mechanisms.
- It is important to involve as many stakeholders as possible in undertaking an anti-corruption strategy.
- Regional organizations, regimes and conventions play an important role in raising awareness on the importance of anti-corruption initiatives.
- Sometimes, double standards such as European Union standards for new entrants, can be manifested and should be reconciled.
- The importance of an ethical civil service is illustrated by the statistical correlation between merit and integrity, as demonstrated by the World Public Sector Report on human resources management.
- Different approaches to public administration themselves create a tension between innovations and results versus accountability.

They also made the following recommendations:

- A conference on the question of whether a new anti-corruption institution should be created or more powers be given to existing institutions could usefully take

place. Such a conference should be preceded by a study of various institutions and the functions they have. Such a study should take into account the different contexts of institutional set-ups that can lead to different experiences.

- A workshop on training of managers of public assets or enterprises should be held under the auspices of the United Nations.

H. Outputs

Among the outputs as a result of the Meeting included:

- Participants' inputs into the UN ODC-sponsored Technical Guide for implementation of the UN Convention against Corruption, that was reviewed by the First Conference of State Parties in December 2006 in Jordan;
- Other proposals (including on the provision of advisory services, design and conduct of training of trainers' programmes, and institutional networking); and
- A policy brief on a selected theme among the three Working Group topics: *Designing and Enforcing Codes of Conduct*.

PART B - SELECTED PAPERS

1. Allan Rosenbaum - Implementing the UN Convention against Corruption in Developed Countries: Some Insights Drawn from the Case of the United States.
2. Natalia Kolisnichenko - Corruption in Developing Countries: Some Insights Drawn from the Ukrainian Experience.
3. Drago Kos – Building an Effective Anti-Corruption Commission – Outlines for Discussion
4. Alexejas Loskutovs - Ethics, Integrity and Accountability in Public Sector: Practice and Lessons Learned in Latvia
5. Muhammad Akram Khan – Role of Audit in Fighting Corruption

Allan Rosenbaum**Implementing the UN Convention against Corruption in Developed Countries:
Some Insights Drawn from the Case of the United States**

The United Nations Convention Against Corruption represents a major step in raising the issue of corruption to international prominence. Not only is it an important initiative, but it builds upon and further stimulates activities undertaken by both many world wide organizations (such as the World Bank) and by individual nations. This is especially true in the world's more economically developed countries where the issue of corruption and how to fight it has been one that has received much attention.

Particularly notable in this regard is the case of the United States where efforts have been underway to deal with corruption, both in the public and private sector, for well over 100 years. The assassination of then President Garfield by a disappointed patronage job seeker in the early 1880's gave impetus to the reform movement that led to the passage of the first civil service legislation in the United States, the Pendleton Act, in 1883. While the legislation was only very slowly implemented – by the 1930's only half of the national government work force was covered – it has had a very significant impact. By the 1960's, almost all national government employees were covered by it and all of the nation's 50 states had passed similar legislation that covered many of their state and local employees.

Subsequent to that, particularly in the period from the late 1890's to the 1920's, "Progressive" reformers undertook many initiatives ranging from the introduction of highly professionalized approaches to municipal government management (an area that was thought to be particularly corrupt) to the introduction of many election reforms designed to encourage accountability and responsiveness as a means of building public trust in government. These included provisions in many state constitutions allowing citizens to undertake electoral efforts to recall previously elected officials, initiate new legislation and amend existing state constitutions. In addition, many laws were passed at both the national and the state level regulating the relationship between elected political officials and appointed administrators and various other fiscal matters such as procurement policy, auditing provisions, and the establishment of various kinds of oversight procedures.

In one sense, the United States represents a very good case to look at and draw insights from in terms of the fight against corruption in that it is not only a very large country that has been concerned about these issues for a long time, but it is also a very diverse country as well. With a very strong federal tradition, much legal authority and political power is constitutionally delegated to the nation's fifty states. This means that there is not simply one set of laws dealing with issues of corruption and accountability but indeed there are fifty-one separate sets of such laws – the national one and each state's individual laws

regarding topics as diverse as government procurement, access to information and the public servant's code of ethics.

Indeed, the U.S. situation is made even more complex by the fact that traditionally most state governments grant substantial authority in such matters to their various local governments. In the United States, there are just under 87,000 local governments of one kind or another. Almost all of them have statutes and/or regulations that in varying ways address issues of ethics and governmental accountability. Indeed, most of the prosecutions (which occur quite frequently) for issues of corrupt government practice within the United States are actually brought by local prosecutors rather than by the national government. The result of this is that while the US system is a bit atypical of many developed countries in its decentralization, it nevertheless provides about as wide ranging a set of approaches to these issues as could be found anywhere.

Despite the fact that it has long been addressed in the United States, the issue of corruption in government nevertheless is still a very relevant one, as it is for other economically developed nations. Even in countries with highly developed and long established democratic institutions, corruption represents a major threat to the sustaining of democracy. Consequently, in that sense, the basic institutions of democracy represent the first line of defense against the spread and development of corruption within a country.

Obviously many factors contribute to making an effective democratic government. These include the ensuring of political accountability through the existence of free and fair elections and competing political parties; the existence of an accessible, transparent judicial system; general respect for the rule of law and basic human rights; and the development and support of a vigorous civil society. Another very important factor -- some might argue the most important one--is ensuring that political power is dispersed and that those who exercise it are held accountable. As the British political commentator, Lord Acton noted over a century ago: "power corrupts, absolute power corrupts absolutely".

Unfortunately, all too often, corrupt practices are in fact utilized to thwart the normal procedures by which those who possess governmental power are held accountable. This can range from election fraud to the buying of influence. Consequently, many individuals concerned about building and sustaining democratic governance even in the most economically developed countries are turning their attention to the task of combating and eliminating corruption in government. This is because the emergence of corruption has produced a sense of alienation from government and disaffection of democracy on the part of citizens of many countries all around the world. Such disaffection represents a very serious threat to the sustaining of democratic governance.

In fact, this is an issue in both developed and developing countries. Indeed, it is not surprising that corruption has become a major problem throughout the world. Many countries are making very extraordinary and profound transformations in quite short periods of time. In several parts of the world, economic, political and governmental systems, not to mention a variety of institutional and social structures have been and , are

all being dramatically altered with stunning rapidity. The ambiguity and insecurity produced by this combination of profound change carried out in a very short period of time has in many places contributed to a growth of corruption and unethical behavior on the part of public sector employees and government officials. Such corruption ranges from minor incidents involving low level bureaucrats seeking petty favors for the performance of what ought to be routine responsibilities, to revelations of corrupt practices involving tens of millions of dollars in the awarding of contracts, the carrying out of privatization and the like.

The problem is not that people in some countries are any less (or more) ethical in their behavior than individuals in comparable positions in established democratic societies. Rather, it is that, in some cases, citizens have not had long periods of time to create the procedural, institutional and cultural mechanisms that serve to limit the possibilities for corrupt behavior. The reality is that almost every country experiences some problems of corruption. However, well established democracies have had considerable periods of time - from decades to centuries - to build and develop the means to lessen and impede the likelihood of individual and institutional corruption. The United Nations Convention Against Corruption represents an important means of sharing the insights drawn from those countries that have spent much time establishing institutional and procedural means to deal with this issue and with those who have not.

For the purposes of this analysis, one might suggest, that those factors contributing to the maintaining of ethical behavior on the part of public employees and government officials in more economically developed countries can be divided into three general categories: the norms and values of the society – that is to say various cultural and social factors; structural arrangements which have been established as part of the process of democratic institution building which help to sustain ethical behavior – the institutional factors; and the various systemic arrangements and relationships which have been designed to limit the opportunities for corrupt behavior and activities – the procedural factors.

For the remainder of this paper, we shall examine these three general categories. We will look first at those procedural elements which are designed to ensure ethical behavior; then we will turn to the institutional factors; and, finally, we will examine the relevant cultural factors. The order of presentation is not a matter of chance. We will look first at procedural arrangements because they are the easiest and quickest to implement and, if that implementation is carried out in a rapid and committed fashion, there can be significant immediate impact. However, in the grand scheme of things procedural factors are perhaps the least consequential over the long term. The reason for this is that procedures established by a government (or one of its agencies) can rapidly be changed, ignored or subverted. Institutional structures, on the other hand, where effectively established, are a little bit more difficult to undermine or circumvent. Most assuredly however, over the long term, the most important factor in assuring the establishment and conduct of ethical and transparent government is the growth and development within any country, or society, of a culture that promotes, values and inculcates a very real concern about, and commitment to, ethical and accountable behavior on the part of public officials, government employees and the entire citizenry.

I. Procedural factors designed to encourage accountable, ethical and transparent government.

There are a myriad of procedural arrangements which governments around the world, and especially in more highly developed democratic settings, have adopted to ensure ethical conduct on the part of public employees and officials. Any effort to fully catalogue all of these, let alone analyze their effectiveness, or to consider those factors that contribute to their effectiveness, would require a book, not a paper. We can, however, for the purposes of this effort, at least briefly review some of the most important of such arrangements. In general, procedural approaches to maintaining ethical behavior tend to fall into two very broad categories – first, ensuring the availability of full and adequate information on governmental activities in order to enable the citizenry to exercise effective oversight over public officials and government employees; and, second, the regulation of the behavior of public officials and governmental employees.

The former category includes the establishment of such procedural arrangements as the implementation of open records laws, the requiring of open meetings, the holding of public hearings generally (and especially on governmental budgets) and the provision of extensive, relevant documentary information to enable the citizenry to accurately assess the activities of their government and those who represent them there. The latter includes the making readily available to all of the citizenry of governmental statutes, regulations and rules and the providing of clear and extensive written information about proposed budgets, the activities and programs of government and the organization and delivery of services. While many, if not almost all, of these practices have been in use for some period of time in well established democracies, many of them are relatively new or, in many cases, still do not exist in countries presently making the transition to democracy. Indeed, in most transitional countries, traditional practice has been to keep information as secret as possible – indeed, just the opposite of making information about government readily accessible to the public. Such secrecy obviously greatly limits the capacity of the citizenry to hold those in government accountable.

Consequently, many international organizations have placed increasing emphasis on encouraging the adoption of procedures that make more governmental information available in countries making the transition to democracy and market economies. Among others, the U.S. Agency for International Development and the World Bank have devoted much effort in many parts of the world to encouraging the introduction of public hearings on budgets at all levels of government, but especially at the municipal level. In some instances, these agencies have made efforts to go a step further and introduce open records laws which require that all of a government's written documents - ranging from an individual's personal notes of a meeting to formal government records (but with the exception of private personnel records) be open to the scrutiny of the public and the news media.

Another, perhaps less radical, approach to making adequate information available to the public involves institutionalizing various kinds of administrative procedures that ensure the extensiveness and adequacy of information that will be produced by government agencies. The introduction, for example, of management information, performance

measurement and planning, program budgeting systems all contribute significantly to making more extensive governmental information available - thus enabling the citizenry to more effectively evaluate not only the performance, but, in many instances, the integrity and accountability of their government officials. In this sense, various innovations such as making available better and more detailed agency reports and informational documents, and the use of new technologies such as the establishment of web pages, and in some cases even the making available of information about government contracts via internet, all contribute to establishing procedures that ensure the openness and integrity of government performance.

Another form of procedural arrangement designed to providing the information necessary to support open, transparent and honest government involves establishing those techniques and processes that ensure that, when there is a question about the ethical behavior of government officials and public employees, adequate investigations can occur to determine the validity of the concerns. Governments in the United States and around the world, have taken a number of different approaches to dealing with this matter. These include the establishment of internal and external audit arrangements, the conduct of legislative oversight activity and the requirement of direct executive responsibility for governmental performance.

In the United States, and other Western democracies, it is typical, especially at the level of local government, for government officials to contract with private sector accounting and auditing firms to review the effectiveness and integrity of governmental financial management procedures. The companies contracted with are themselves subject to legal prosecution should their reports on these matters found to be negligent or misleading. Likewise, various kinds of procedures exist for oversight to be carried on internally within the government itself. These range from simply requiring that the chief executive be held responsible in one manner or another for the performance of those who report to him or her, to requiring on some routine basis regular reviews of agency performance.

The second major approach to ensuring open, ethical and accountable government is to regulate the behavior of government employees and public officials. Frequently this is done through codes of ethics which in some instances (where laid out by professional associations) are enforced through social pressure. In other instances, however, governments themselves have chosen to pass laws, which regulate the performance of public employees and make those employees who deviate from the standard established in law liable for criminal penalty. Such arrangements particularly exist in areas where financial matters are centrally involved, such as the procurement of supplies, equipment and facilities.

Another area in which the activities of public employees are regulated in order to attempt to minimize the possibilities of corruption is with regard to political activities. In the United States and other many Western democracies, public employees are by law not allowed to engage in partisan political activity and therefore are assumed to be less susceptible to efforts to manipulate governmental activities in such manner as to benefit one individual or political party, or set of individuals, at the expense of another. Finally,

it should be noted that increasingly in the US and other democratic societies procedural safeguards are being established to protect those individuals who reveal conduct and performance that is less than totally ethical.

II. Institutional factors designed to encourage accountable, ethical and transparent government.

Without question, the most important structural arrangement helping to ensure ethical government involves the separation of contemporary government into different branches and levels in such a manner as to disperse power and authority and the ability to control government funds and activity among different individuals in different units of government. Such arrangements limit very significantly the possibilities for the monopolization of power and provide a critical opportunity for the checks and balances and competition among branches and levels of government. It also further encourages the making available of the information which the public requires to ensure open, effective and transparent government.

Of particular significance is the fact that most democratic governments, and particularly those that are well known for honesty and integrity in government performance, are ones that rely very heavily upon the decentralization of governmental institutions. Especially notable in this regard are the Scandinavian countries, and, to a lesser extent in terms of the absence of corruption, the United States, where a very high proportion of governmental expenditures occur at the sub-national level, thus enabling citizens to more closely scrutinize and understand the activities of government. This also allows individuals to have a better sense of the people who are participating in government as well as to more easily understand and gain access to information about government and its programs.

Many democratic governments also have established and rely heavily upon various kinds of institutional arrangements, which provide for substantial oversight of the activities of government. The Scandinavian countries introduced the Ombudsperson, a highly independent government official, who has extraordinary investigative powers to determine that governmental agencies are acting appropriately - both in terms of responsiveness to the citizenry and also in ethical terms as well. In the United States, there has been a proliferation within government agencies of what is called "Inspector Generals" offices. These are units within many government agencies which are given extraordinary powers and authority to investigate the normal operations of the agency of which they are a part in order to ensure the maintenance of the highest levels of professional and ethical standards.

Also important in this regard is the authority given to legislative branches, as well as judicial branches through grand juries, to carry out their investigative activities unimpeded by the executive branch. Often when legislative branches (usually through their committees) are given significant oversight authority, they will have various resources which enable them to conduct thorough and independent investigations of the activities of the executive branch. They will possess expert staff and, in many cases, be

given subpoena power which enables them to compel honest and full testimony from members of the executive branch on the threat of imprisonment. In addition, many legislative branches will establish specific agencies designed to exercise direct oversight over the executive branch. Some of these agencies focus principally on issues of financial management, while, in other cases, their authority is much more wide ranging.

There are numerous other structural arrangements that the United States and other contemporary democratic governments have established to encourage open, accountable and ethical government. These include, for example, a variety of techniques to involve private citizens in the practice of government. Thus, many Western democracies (and especially the United States) rely very heavily upon citizen boards to advise, oversee and, in some cases, actually make policy decisions for government agencies. These boards often have access to trained staff and have varying levels of legal authority to require the provision of information by the staff of the government agencies they oversee or advise. The use of such boards enables citizens to gain better access to information as well as to develop expertise in the area of policy for which the board is responsible.

There are also other kinds of institutional arrangements established to facilitate ethical government. For example, in the United States, especially at the local level, many governments have arrangements whereby individual citizens can initiate the removal of public officials from office by obtaining a certain number of signatures on a petition. This results in the conduct of what is called “recall elections”, which, if the electorate approves, leads to the individual officeholder being removed from government prior to the conclusion of his or her term. In other communities, the participation of political parties in local elections is forbidden as means of limiting the potential for corruption that comes from intense party competition for the control of patronage, contracts and the like. In many Western democracies a high reliance is placed upon the use of professional managers in local and national government as another way of eliminating the potentially corrupting influence of intense political competition.

III. Creating a culture that supports accountable, ethical and transparent government.

As noted earlier, procedures established by government sometimes can be legally changed or informally manipulated. Likewise, institutional structures can in some instances be significantly altered – especially in more fragile democracies. Consequently, in the end, the traditions, values and cultural norms of a society represent a very important, and perhaps the most important, means of sustaining the procedures and structures that insure accountable, ethical and open government. Certainly, one of the key factors promoting ethical and accountable government in many Western democracies is the longstanding tradition of a free, open and effective press. In fact, it is arguable that the existence of a strong investigative media may represent the single most important force for ensuring and preserving integrity and ethical behavior in government. While frequently attacked and criticized by government officials for having its own bias, in most democratic societies, and certainly the United States, media investigation is an extraordinarily important force in the promotion of honesty in government. However,

because of the tradition of politicians frequently attacking the media, it is critical that governments have constitutional or statutory protection for those individuals in the media who call attention to unethical or inappropriate behavior on the part of those within government.

Another key factor in many democratic societies, especially in the United States, is the general approach which is taken to both educating and socializing those who work for a government. Particularly in the United States, great emphasis is placed upon the notion of the person working in government being “a public servant”. In that sense, each individual government employee is held to be responsible and accountable to the citizenry for the highest standards of performance and ethics. Much effort is made in educating both those who will go into government, and the citizenry of the country to ensure that there is a widespread consensus that public officials must be held accountable for high standards of integrity. In that sense, both the culture of government, as well as the expectations of the society (reflected in both public attitudes and professional norms), place great emphasis upon the maintaining of high levels of ethical behavior.

Another set of cultural factors that contribute in important ways to ethical governance is the combination of a government that has had long term political and economic stability and an active civil society. It is apparent that the development of a culture and tradition of ethical behavior within a society requires a reasonable degree of stability and responsiveness on the part of the government. Stability facilitates the establishment of strong norms and expectations for individual performance. Similarly, the existence of an energetic civil society, which demands responsiveness on the part of government officials, can become a critical factor in maintaining governmental integrity. In a number of Western democracies, and especially in the United States, there are many non-profit organizations and groups which, through various means of financing, are able to employ individuals who become very expert in particular areas of public policy and governmental activities. These individuals, through their investigative skill, represent an important form of check on the potential for corruption in government. Indeed, many such organizations take great pride in their capacity to investigate the activities of government officials and serve as “watchdogs” over government agencies.

CONCLUSION

As the above very brief, and necessarily limited, review suggests, there are many procedural, institutional and cultural factors that all contribute to the maintaining of ethical and accountable behavior on the part of public employees and government officials. In fact, no single approach - be it institutional, procedural or cultural - represents the one best way. The reality is that human nature is such that there will always be some measure of dishonesty and unethical behavior in government. Consequently, those societies that are most concerned with these matters rely on many different approaches in order to address these issues. Procedural, institutional and cultural factors, when taken together, all can play an important role in the institutionalization of accountable, ethical and transparent government. The United Nations Convention Against Corruption, which embodies many of the approaches

described above, represents an important means for guiding all countries in the direction of developing policies to ensure accountable, ethical, and transparent government.

Natalya Kolisnichenko

**Corruption in Developing Countries:
Some Insights Drawn from the Ukrainian Experience**

INTRODUCTION

Issues of corruption have been identified by the United Nations, as well as other international organizations and many researchers as very serious obstacles to economic growth. Certainly corruption exists in every country, but its influence is much greater in developing countries. Especially if higher level government officials are involved in corruption it can drain huge amounts of resources from a country. Unfortunately, in many developing countries corruption has become very wide spread and is a part of every day life at all levels of government.

One can get a sense of the perverseness of corruption by simply reading the newspaper and watching the news media. Recent tragic examples of corruption have involved former presidents of Costa Rica, senior leaders of Brazil's ruling political party and high ranking officials from various other countries in the Western Hemisphere. Similarly, numerous countries in Africa and Asia have been the scene of major problems of corruption. In many instances corruption continues to be one of the biggest obstacles to fighting poverty. Often there is a lack of political will to strengthen anti-corruption institutions which helps to perpetuate major issues of corruption and undermines efforts to improve the quality of life for all citizens but especially for those in the poorest sectors of society.

THE UKRANIAN CONTEXT

Combating corruption has become one of the main concerns of Ukraine's government, especially its executive bodies. Seeking to manage this negative phenomenon, the Country's authorities have resorted to a number of legislative, institutional, organizational and practical activities to bring under control and significantly reduce the rather high level of corruption that exists in Ukraine. Efforts have been made to change the relationship between citizens and the state in order to rebuild the people's trust in government.

The citizens believe that without an honest, fair and effective public administrative system other efforts to control or eliminate corruption will fail. The International Institute of Sociology (Kyiv) at the end of 2005 conducted an opinion poll among 2,021 persons in Ukraine. 52.3 % of respondents consider critical the problem of corruption in Ukraine, 38.4 % consider this problem a serious one.³ To change this situation, the citizens expect to participate to a much greater extent in decision-making processes, in order to improve the relations with state authority and the civil service. There is need for many means for

³ *Regnum news agency (Russia), April 4, 2006*

citizen interaction with the state - including through civil society, public oversight, the media, and greater awareness of citizens' rights and the responsibilities of government.

The rapid political, social and economic transition occurring in Ukraine has been one of the key reasons which produced the growth of corruption, great violations in the ethical sphere and especially a great decline in the professional ethics of the civil service. As in most transitional countries, corruption exists at all levels of human relations – from officials and businessmen to ordinary citizens. It creates obstacles to development, slows the process of political and economic integration and puts at risk social development. Corruption influences the society in many ways and it ruins the government system and its institutions. As a result, it threatens the economic and political sovereignty of the country.

Corruption in Ukraine is of a systemic nature. It has degraded and, in some cases, even ruined existing institutions of power and undermined the efforts at re-distribution of resources. The appearance of market-oriented institutions and new rules of public mechanisms created first, a situation of a legal vacuum and, second, a situation where state bureaucrats worked in a non-responsible manner and in a chaotic atmosphere of decision-making. This situation occurred because of: weakness of the central apparatus, which could not control the bureaucracy; the lack of adequate systems of responsibility; a high level of non-controlled authority; low salaries and, as a result, low qualification of civil servants. Under conditions of inadequate law in Ukraine, corruption started to play an important function in resource distribution and investments. The process of privatization was particularly characterized by a high degree of corruption and because of this it has continued to be a significant political issue in the country. These events showed that bureaucrats managing these processes could be corrupted.

Beginning in 1993, Ukraine experienced numerous severe economic crises. During this time many Ukrainian bureaucrats took advantage of opportunities to enrich themselves and in many cases were able to successfully avoid responsibility. To some extent this even became institutionalized. The new Law on Civil Service allowed discretionary bonuses to civil servants as well as high pensions which were 3 to 15 times greater than that for other retired people. There was no economic growth as the result of or initiated by privileged bureaucratic activity and such awards as were received often seemed to reflect political favoritism rather than merit. Rather there was a deep crisis as the population of the country economized on everything and governmental goods and services were greatly reduced. The growth was only in the political and administrative sphere where civil servants at various levels were making decisions on almost all spheres of life, including the system of licensing, documentation, privatization, flats distribution, etc. To increase their personal benefits, they took advantage of the situation of lack of goods and services. They could do this because the only punishment received if caught was losing their position.

Ordinary citizens came to believe that all issues could be solved only in a dishonest way, using private and personal relationships, giving money as bribes, etc. Morality was undermined by the belief that the authorities who were to fight corruption (interior

department, police, prosecutor's offices, customs offices, etc.) were helpless and that corrupt activity was an every-day practice and went unpunished. Such morality led to people's passivity and disbelief in the efficiency of administration. As a result, most Ukrainian citizens considered corruption a fact of life and expressed little willingness to fight it.

As Aslund and McFaul suggest, the old regime policy was characterized with its disregard for the law. "Ukraine has fairly rudimentary... legislation... The legal system is in sad shape and no real judicial reform has been undertaken. Rather than pursue any legal reform, President Kuchma exploited the lawlessness of the old communist system, which allowed him and the staff of his vast presidential administration to call any official and order him or her to make a decision in violation of the law."⁴

The main factors which supported the formation and development of corruption were, as Aslund and McFaul also suggest a low level of administrative and political culture, its non-responsiveness to the formal level of democracy; a high level of state interference into the economy and the private life of citizens, which created the weakening of market regulative mechanisms substituting them with tough normative regulation; and the erosion of civil society foundations.

After the Orange Revolution, it was expected that the new government would create new standards in economic, political and civic life. The focus was on changing the relationship between citizens and the state through greater press freedom and increased political will to address corruption; as well as a wider role for the judiciary not only as the guarantor of rule of law, but also as a primary means for citizens to hold government accountable. Implementation of administrative law reforms and establishment of the new administrative courts were supposed to be key in this sense.⁵

Unfortunately, the intention of the Orange leaders "to liquidate the "shadow" economy", "to take the bandits to jail" soon led to new corruption scandals. The government of Yulia Tymoshenko had started a wide campaign to fight corruption (re-privatization of enterprises, revision of land redistribution, closing of free economic zones, stopping contraband) including bringing criminal cases on the stealing of state funds, etc against senior officials of the previous regime. However, Tymoshenko was fired as Prime Minister and little or no progress was made in terms of effectively battling corruption

LEGAL FRAMEWORKS

⁴Aslund A., Mc Faul M. *Revolution in Orange. The Origin of Ukraine's Democratic Breakthrough.* – Carnegie Endowment International Place. – Washington, D.C. – 2006. – 218 p. – P. 24-25.

⁵ *Concept Paper: Rule of Law Strengthening and Anti-Corruption in Ukraine. Recommendations for USAID Assistance.* May 2005. David Black and Richard Blue.

There has however been a variety of efforts since Ukraine achieved independence to address issues of corruption. Parliamentary activity of the last decade has resulted in important changes in legislation, especially to laws regulating authorities' activity. However, overall, the numerous anticorruption initiatives introduced in recent years have not achieved overwhelmingly positive effects; in part because they have not been effectively implemented. Consequently, Ukraine's rating for corruption on the Transparency International Scale is still unchanged and remains at a high level. Nevertheless, some positive improvements have been made to the legal system with regard to the fight against corruption.

In recent years the legislation of Ukraine was developed in such a manner as to harmonize it with provisions of the UN Convention Against Corruption of 31 October 2003. A number of documents were developed to fight corruption. This is illustrated in the report prepared by the Government of Ukraine for the 5th Monitoring Meeting of the Istanbul Anti-Corruption Action Plan, 12-13 June 2006.⁶

Among the important initiatives were:

- A draft concept for overcoming corruption in Ukraine "On the Way to Integrity" (which identifies the activity of the public authorities and the civil society with the goal of reducing the negative impact of corruption)
- A draft law of Ukraine on the openness and transparency of the activity of the executive authorities and bodies of local self-government developed by the Justice Ministry with the aim of enhancing the validity of government decision-making processes in order to ensure accountability and promote public trust in state authorities
- The Law of Ukraine "On Procurement of Goods, Works and Services with Public Funds" (and Law of Ukraine "On Amendments to the Law of Ukraine "On Procurement of Goods, Works and Services with Public Funds") required that the executive itself monitored violations of public procurement procedures
- A draft Law On Civil Service (prepared by the Main Civil Service Department) would regulate issues of disciplinary responsibility of public servants for non-fulfillment or inadequate fulfillment of official functions, including intentional failure to address the harmful impacts as a result of omission, power abuse, violation of restrictions connected with staying in a public service position, an deeds which can discredit a public servant or compromise the public authority or the state.

⁶ *Anti-Corruption Network for Eastern Europe and Central Asia, Anti-Corruption Division, Directorate for Financial and Enterprise Affairs Organisation for Economic Co-operation and Development (OECD)*

The Justice Ministry aiming to harmonize and clarify the relationship between violations of the Criminal Code and the Law on the Fight against Corruption has elaborated the following draft laws: the Criminal Law Convention on Corruption; the Additional Protocol to the Criminal Law Convention on Corruption, of the United Nations Convention on Corruption, and related draft laws on the Fundamentals of Preventing and Countering Corruption, on Introduction of Amendments to Some Legal Acts of Ukraine Concerning the Responsibility for Corruptive Offences, and on Responsibility of Legal Persons for Corruptive Offences. These draft laws are ready for urgent submission by the President of Ukraine to the Ukrainian parliament, the Verkhovna Rada. In addition to these various laws and draft laws, there are many competing initiatives to address issues of corruption by existing state bodies, foundations, think tanks, and NGOs.

Nevertheless, these initiatives have in many instances not been brought to fruition or have not been notably successful. Among the major reasons for the failure of anti-corruption programs are: lack of political will among decision makers; limited power and resources to accomplish reforms; overly ambitious and unrealistic promises; uncoordinated reforms; reforms that rely too much on law enforcement; reform strategies that target only low level officials and not the senior levels; reform strategies that do not deliver "quick wins"; reforms that are not fully institutionalized.⁷ Besides, for the most part, anticorruption campaigns are often actually politically motivated struggles for power. The politicians in power accuse their predecessors or their opponents of corruption principally during presidential/parliamentary campaigns.

NATIONAL ANTI-CORRUPTION INSTITUTIONS

To coordinate efforts aimed at dealing with corruption, a Coordinating Committee for Combating Corruption and Organized Crime has been created under the auspices of the President of Ukraine. It was entrusted to coordinate mutual actions of national law enforcement and control bodies for combating corruption and organized crime. In an effort to implement practical activities aimed at combating corruption, special units have been formed in the Ministry of Internal Affairs, Security Service, General Prosecutor's Office and State Tax Administration.

The following institutions are involved in anti-corruption policy implementation:

- *The Coordinating Committee on Fighting Corruption* (a Parliamentary committee) is to provide legislative support for law enforcement activity and organized crime resistance
- *The Interdepartmental Commission of the Ukrainian Council for National Security and Defence* analyses the activity of the public authorities in the sphere of combating corruption; prepares proposals on priority areas of public policy in the anti-corruption sphere considering international standards;

⁷ *USAID Handbook for Fighting Corruption" (October 1998)*

develops measures for the coordination of activity of the state authorities in the combat against corruption

- *The Audit Chamber* of Ukraine is authorized to control effectiveness and efficiency of budget expenditures in public procurement
- *The Accounting Chamber* is a permanent acting body of external state financial control. It has been functioning since 1997, on behalf of Verkhovna Rada of Ukraine it executes control over revenues and the use of the funds of the State Budget of Ukraine. It secures the right of people to require the transparent, appropriate and effective use of the community funds, i.e. taxpayers' funds, and searches for drawbacks in the financial system of the country. It seeks out the misuse of budget funds both in central and local authorities, identifies causes and pinpoints ways of eliminating and preventing violations. The scope of authority of the Accounting Chamber includes administrative staff of Verkhovna Rada of Ukraine, administration (secretariat) of the President of Ukraine, state authorities including their administrative staffs, the National Bank of Ukraine, the State Property Fund of Ukraine and other state authorities and institutions established according to the [Law of Ukraine "On the Accounting Chamber of the Verkhovna Rada of Ukraine"](#), as passed in 1996
- According to new legislation, *the Anti-monopoly Committee* of Ukraine is in charge of public procurement regulation and the *State Service on the Fight against Economic Crime* of the Ministry of Interior of Ukraine opens criminal cases against officials of the State Administrative Service.

In order to strengthen cooperation with civil society, a *Public Council* (a consultative authority on issues of public policy) has been set up at the State Financial Monitoring Committee of Ukraine to ensure the exercising of citizens' constitutional right to participate in the process of state administration and instituting a permanent dialogue with all social groups of the population and citizens' associations. Measures also have been taken to create a specialised national Anti-Corruption Authority – *the National Investigations Bureau* – and to develop a relevant legal framework, including the adoption of a new edition of the Code of Criminal Procedure.

The new *Public Information-Consultative Centre* (which is a unique entity introduced by the draft law of Ukraine On the Openness and Transparency of the Activity of the Executive Authorities and Bodies of Local Self-Government) carries out the gathering, systemisation, storage, and provision of information, as well as granting assistance, consultations, and explanations to the public. In addition, the Justice Ministry has set up a *working group* (which includes both representatives of the Ministry and of public organisations) for the development of a draft concept paper on interaction between the state and civil society. Also, cases of corruption are constantly discussed at the meetings of *oblast and rayon administrations*, where the practice of legislation implementation on corruptive issues is analyzed.

The institutional authorities in the sphere of fighting corruption are diverse, unclear and overlapping. Analyses show that there are too many institutions of such kind. Each of them wants to be a leader and thus prevents the initiatives of others.

CIVIL SERVICE AND ETHICAL BEHAVIOUR

The civil service is still a work in progress in Ukraine and the establishment of an effective civil service system is of great importance. Ukrainian civil servants are subordinate to the Main Civil Service Department of the Cabinet of Ministers. The law “On Civil Service” prohibits civil servants from misusing their authority but provides no enforcement mechanism. The Constitution prohibits government officials from engaging in business activities. However, the 1991 Law on Entrepreneurship does not consider the ownership of company shares a business activity, and as a result, many officials hold large stakes in enterprises and place their relatives and friends in key managerial positions.⁸

The Main Civil Service Department of Ukraine conducts measures aimed at preventing corruptive phenomena among public servants and local self-government officials. It is planned for it to conduct official investigations in cases of suspected or reported corruption and to fight against corruption and violation of the ethics code by public servants. In order to take into consideration public opinion, to strengthen the transparency and openness of public executive bodies, a permanent direct *telephone line* “Civil Service” and an *Internet line* “Prevention of Corruptive Phenomena” were opened at the Main Civil Service Department in 2004. The Main Civil Service Department also conducts general training on anti-corruption for public officials; develops and implements specific anticorruption and ethics trainings - in particular for those public officials who work in high corruption-risk areas. The in-service training focuses on operational and procedural issues, including ethical standards.

To ensure public trust means to develop conditions for the civil society in Ukraine and to establish relationships between bodies of state authorities and the civil society through, first and foremost, strengthening guarantees of citizens’ participation in the administration of public affairs. The draft law of Ukraine On the Openness and Transparency of the Activity of the Executive Authorities and Bodies of Local Self-Government regulates the activity of state authorities and bodies of local self-government in making public information on decision-making methods and procedures and conditions for providing access to information on these bodies and their activity.

In general, it is apparent that public participation at present involves mostly information provision to the public, or responding to public complaint. For Ukraine it is important to make the process of developing national anti-corruption initiatives more consultative and to involve representatives of civil society and business in the process of policy development. It is reliability which directly influences public attitudes towards the state and its administration. Ethical standards that the civil service has to respond to are

⁸ <http://unpan1.un.org/intradoc/groups/public/documents/nispacee/unpan017053.pdf>

increasing (one of the reasons is the gradual Europeasation of the civil service of Ukraine). There are demands for transparency and openness of governmental bodies to enable them to be accountable to citizens, and for higher ethical behavior by civil servants. Strengthening of anti-corruption actions by ensuring the high ethical standards of those who represent executive bodies (administrative, financial, law enforcement, prosecution), as well as from the Parliament and Civil Society (e.g. NGOs, academia, respected professionals etc.) is a main task for administrative bodies in Ukraine.

In many countries these issues are regulated by the Codes of Conduct for Civil Servants, the enforcement of which have long served as an important means of combating corruption among high-ranking officials and in top-secret government dealings. In Ukraine, there are practically no laws regulating civil servants' professional ethics. That is why the Justice Ministry, jointly with the Main Civil Service Department, has developed a Draft Good Practice Code for those who execute functions of the state, bodies of power and bodies of local self-government. This Code regulates the restrictions on using official powers, determines the rules of conduct for public servants, prohibits the acceptance of illegal remuneration or gifts and warns against actions inducing the receipt of non-pecuniary benefits (positions, honorary titles, scientific degrees, awards). It imposes restrictions on political and civil activities, identifies the procedures for public participation, sets the requirements of conduct and identifies (for the first time) the notion of conflict of interest and sets the norms of conduct in case of the emergence of such a conflict.

At the same time, preventive actions should not only focus on codes of ethics, they should introduce strategies on reducing the inappropriate discretionary powers of civil servants. Open government measures such as increased transparency of decision-making procedures, access to information and public participation assist in their effort.

To prevent corruption, and to improve the procedures of recruitment and entering the public service, there has been introduced (by Presidential decree No. 1098 of 19.11.01 on Obligatory Special Verification of Information Presented by Candidates to Public Service Positions) a verification process which is conducted by the Main Civil Service Department, the State Tax Administration, the Interior Ministry, and the Ukrainian Security Council as well as a special examination of candidates for civil service positions of public authorities or bodies of local self-government.

However, the current Law on Civil Service is in contradiction to international legislation on human rights, equality and discrimination with regard to equal payment for equal jobs and in contradiction to Constitution of Ukraine. In fact, the Law On Civil Service supports traditional communist style nomenclature: there is an immediate connection between the nomenclature bonus and corruption – they are from one environment, the monopoly. The nomenclature bonus is legalized corruption. That is why some experts think that it is impossible to introduce any measures to combat corruption until the informal practice of clan monopoly (privileged nomenclature which ignores any anti-corruption norms) will be ended.

There is one more negative tendency in the civil service - approximately 50 thousand civil servants of Ukraine leave their positions annually (among 250 thousand). As a result, the Main Civil Service Department of Ukraine has already developed the Draft Law on Civil Service where civil servants are obliged to follow the procedures for the declaration of incomes and financial liabilities (senior officials must additionally declare information on movable and immovable property, bank deposits and securities owned by them and their family members residing with them). These measures improve the procedures for regulating the behavior of public officials and persons occupying political positions, prosecution, and security, officials, interior officers, employees of the state customs service, judges and members of their families. The Draft Law may be seen as an important element of anti-corruption strategy, but it will certainly not be sufficient. This will certainly be the case if, as all too often has happened in Ukraine, enforcement and implementation of the law is sporadic at best.

TRUST IN GOVERNMENT

The citizens expect to participate to a much greater extent in decision-making process, to improve the relations with government authority and the civil service. There is need for many means for citizen interaction with the state - through civil society, public oversight, the media, and greater awareness of citizens' rights and the responsibilities of government. As noted earlier, the International Institute of Sociology (Kiev) at the end of 2005 conducted an opinion poll among 2,021 persons in Ukraine. 52.3 % of respondents consider critical the problem of corruption in Ukraine; 38.4 % consider this problem a serious one.⁹

To ensure public trust means to develop conditions for the civil society in Ukraine and to establish relationships between bodies of state authorities and the civil society through, first and foremost, strengthening the guarantees of citizens' participation in the administration of public affairs. The draft law of Ukraine On the Openness and Transparency of the Activity of the Executive Authorities and Bodies of Local Self-Government regulates the activity of state authorities and bodies of local self-government in making public the information on decision-making, methods and procedures for these bodies' actions and about conditions for providing access to information on these bodies and their activity.

In general, it appears that public participation at present involves mostly information provision to the public, or responding to public complaints. For Ukraine it is important to make the process of developing national anti-corruption initiatives more consultative and to involve representatives of civil society and business in the process of policy development. Among the measures taken, special attention must be paid to preventing and revealing the cases of corruption in central and local executive and law-enforcement bodies, in the customs and tax departments, in the credit and banking sector, in the course of privatization, in the foreign economic activity, and in fuel and energy sector. Special control has been established to prevent cases of corruption in the civil service.

⁹ *Regnum news agency (Russia), April 4, 2006*

CONCLUSION

As the result of a number of legal, institutional, organizational and practical activities provided by national executive and legislative bodies, actions aimed at combating corruption have been enhanced. The positive outcomes of preventive measures against corruption have resulted in better coordination at both the local and the national level. In Ukraine, efforts to enhance the organizational and legal foundation for combating corruption, and for the enhancement of personal responsibility of civil servants is central to building people's trust in government. However, until the implementation and enforcement of laws is improved, systemic corruption will remain a problem in Ukraine

Though corruption differs from country to country, as we have seen through our examination of the situation in Ukraine, there are some key factors inherent to the sustaining of corruption. Among them are:

- **Personal Conflict of Interest.** The orientation of the public/civil servants/officials and governmental workers to favor some definite group of clients, with whom they are connected ethnically, geographically or by other relations creates the conditions favorable for corruption. The boundary-line between “national” and “private” is unclear/eroded, that is why the violations of the position aiming to get personal benefit occur in practice.
- **Weak enforcement of legislation.** Corruption is flourishing in those places where the laws exist only for some definite people, not for everybody; where the juridical mechanisms are used to pursue the private interests, not national ones.
- **Inefficiency of institutions which are obliged to provide accountability.** The institutions controlling violations of power by the officials created by the state (e.g. auditing offices, juridical bodies, legislative authorities) or formed outside the state structures (e.g. mass media, NGOs) are not effective.
- **High level corruption in public sector.** In the countries where the corruption is spread widely, there are grounds to suspect that higher levels of the government and senior officials are engaged in it and do not have stimulus/motives to fight it.

Greater transparency, accountability and a merit based human resource system are all principles of public administration which if implemented make it feasible to more effectively address problems of corruption. Other critical instruments in the battle against corruption are: clear identification of the directions a reform should take and the manner of implementing them, encouraging the development and strengthening of civil society, enhancing the capacity and ability of the media to address issues of governance, simplifying and opening up government, encouraging demands from the private sector for higher standards of governance, developing effective codes of conduct and enforcing

them, drawing upon the support of international and regional organizations and utilization of their various programs to strengthen institutional capacity and integrity, and insuring the transparency of governmental activity.

Critical in this regard as evidenced in the activities of Ukraine and numerous countries are the following:

- Establishing and/or strengthening penalties for corruption
- Ensuring the institutional capacity to implement policies aimed at lessening corruption
- Developing specialized bodies or agencies to root out corruption
- Providing increased training and guidance for public and administrative officials
- Generally strengthening organizational performance and effectiveness
- Reviewing regulatory effectiveness
- Encouraging the highest standards of public sector values
- Simplifying administrative systems
- Integrating ethical values into management

Drago Kos

BUILDING AN EFFECTIVE ANTI-CORRUPTION COMMISSION

OUTLINES FOR DISCUSSION

Occasionally countries decide to establish a new budgetary consumer in the form of a new public institution – typically they are compelled to do so either by their citizens or by their international commitments. The recent rise of corruption has resulted in the establishment of various anti-corruption institutions by an increasing number of countries. Since fighting corruption can be a very unpleasant exercise for chief policy makers, they can be tempted to establish such an institution by means of a legal act that can be easily changed or even abolished. Therefore, one of the most important prerequisites for an effective anti-corruption body is proper legal documentation that provides the basis of the establishment and operation of this institution. Without a doubt, the best way to establish such an institution, and to ensure its relatively unhindered operation, is by means of a law that is adopted through routine legislative procedure.

The very first decision to be considered when establishing such a law is the main character of the proposed anti-corruption institution and its position in the existing institutional framework of the country. There are different forms of anti-corruption institutions that fight corruption in the following ways: prevention, repression, and education. It is understandable that prevention and education go together but what about repression? The answer is basically very simple, if citizens still trust the “ordinary” law enforcement services, the unforeseeable risks of establishing an additional one are simply too problematic to be tackled without a compelling reason to do so, for instance, the division of work between the existing and new institution, the division of power and cases, the flow of information, the level of co-operation, and the fragmentization of the fight against corruption.

When the decision on the character of an institution has been made, its position in the country’s institutional framework must also be determined and its powers defined and regulated. Of course, powers of an institution with an investigative authority are completely different to the powers of an institution that deals exclusively with prevention (and education). Investigative powers have the potential to impinge upon basic human rights, much more so than the powers of purely preventive bodies. Therefore, legislators must be very careful in defining investigative powers and should follow at least the same standards that are used for traditional law enforcement agencies. The powers that an anti-corruption institution has and the range of its duties with respect to targeted professions are indicative of its formal position. If the institution is established to fight corruption in all three branches of power, it should be independent. Complete independence that is bound by the basic constitutional principles of the country and without interference of any branch of power is the best possible position. That having been said, it is clear that

such an institution must also be completely accountable for its deeds and actions and a proper reporting mechanism to a superior state body must be established.

When the institution is established, and its powers are regulated, the most difficult task starts. The anti-corruption institution must be given sufficient resources to hire and to educate its employees, to purchase the necessary premises and technical equipment, and to pay an appropriate salary to its employees. Independence in the drafting and expenditure of its budget is also a basic precondition for its effective operation, as well as being a clear signal of the real intentions of the country establishing such an institution. The success of country's anti-corruption institution depends upon a seemingly trivial matter such as money, but money is proof of genuine political will. Even the best legal arrangements for the establishment of an ideally positioned anti-corruption institution will undoubtedly fail without an appropriate budget allocation.

When an institution begins to operate it must strictly follow principles that are unconditionally linked to its work: objectivity, professionalism, impartiality, integrity, honesty, effectiveness, and efficiency. If these principles are not followed, those who oppose the institution can easily discredit its efforts and demand its re-structuring or even its abolishment.

The following relates to problems of the management of resources within the anti-corruption institution...

Aleksejas Loskutovs

**ETHICS, INTEGRITY AND ACCOUNTABILITY IN PUBLIC SECTOR:
PRACTICE AND LESSONS LEARNED IN LATVIA**

The public sector in Latvia has undergone many important changes over the past decade. In the mid-1990s, the Latvian government initiated major public administration reform. This reform was one of the cornerstones of Latvia's entry into the European Union, which it joined in May 2004. Latvia made a great effort to develop a legal framework that regulates the public sector, as well as the relationship between the public sector and private citizens. Today, legislation in Latvia and the internal regulations of different public institutions cover, in various ways, the principles of ethics, integrity, and accountability.

Formally, the reform created a basis for a modern public sector based on general European and international standards. The competence of public institutions is clearly limited by law. Each institution must have objectives and is judged by its results, and there are mechanisms to inform and involve the public. Administration and politics are separate and civil servants are required to be politically neutral. According to the public administration reform concept developed in 1995, public servants must also respect the principle of ethics – which is defined as public interest above personal interest. Many positive initiatives have been developed to ensure the accountability of the public sector. The parliament has an important role in controlling the work of the government and through it the public sector as a whole. In fact, the parliament in Latvia is not using these powers enough. Public institutions should develop work plans. In addition, participation of the public and professionals in the decision making process of public institutions should be enacted through public consultative bodies. Annual reports have become obligatory. Latvia is also one of the rare countries in the world where the meetings of the Cabinet of Ministers are open to the public.

This a big change if we consider that not so long ago, before the break-up of the Soviet Union, words such as “public institutions”, “state”, “public interest” had a completely different meaning. Public administration and political decision-making were closely linked. Public officials exercised wide discretion and made decisions in secrecy. Civil servants, party leaders, and doctors could accept gifts and help their friends and relatives – this was accepted as common practice.

Therefore, the reform of public institutions was a much bigger challenge and changing the formal structures and rules was not enough. The mentality and tradition needed to change as well. The laws needed to be understood and applied in practice. Public servants needed proper guidance and education in order to understand what behaviour was actually expected from them. Finally, sanctions and efficient control mechanisms needed to be established to ensure that those who do not respect the law are punished. As noted in the study on the national integrity system in Latvia, carried out in 2003 by Transparency International Latvia, the development of legislation is far ahead of the

capacity of the public service to implement these norms and to control their implementation.

Given these circumstances, it was decided to address the concerns of ethics and integrity in the public service in Latvia through the prevention of corruption and conflicts of interest. The National Strategy and Programme for Corruption Prevention and Combating in 2004-2008 were adopted by the Latvian government in 2004. These two documents form the national anti-corruption policy of Latvia. This policy has a comprehensive approach in the fight against corruption that is based on three pillars: prevention of corruption, investigation, and education of the public. One of the aims of the programme is to ensure the ethical behaviour of public officials and also to ensure that they perform their duties in the public's interest rather than for personal gain. In the prevention of corruption in public institutions the Programme foresees five priorities: the central role of heads of state and municipal institutions in preventing a conflict of interest within their institutions, the development and application of codes of ethics, clear and strict recruitment criteria for the public service, the possibility to appeal against administrative decisions, and reporting on the activities of public institutions.

To ensure that this policy and relevant legislation were actually implemented, it was decided to establish a single, specialised anti-corruption body – the Corruption Prevention and Combating Bureau, which was created by law in 2002 and has been fully operational since February 2003. It is independent of public administration and has investigatory powers. According to the national anti-corruption policy, the Bureau has a wide set of tasks starting with the prevention of corruption through the control of the activities of public officials and the financing of political parties, and the education of the public about the investigation of criminal offences of corruption in the public sector. Although the Bureau is a new institution, it was recognised in 2005 as one of the most trusted institutions in Latvia.

Further to this, Latvia has adopted a law on the Prevention of Conflict of Interest in Activities of Public Officials. The purpose of this law is to promote the integrity of public officials, as well as the transparency and accountability of the public service. The law enforces restrictions and incompatibilities in situations where public duties are combined with other jobs, commercial activities, or the accepting gifts, etc. These rules apply to all public officials from the president to an ordinary civil servant. Over the past three years the Bureau has gained unique experience by enforcing this law and other restrictions on the activities of public officials, as well as educating public officials on conflict of interest and respect for law and ethics.

I will now briefly describe to you how the Bureau works in the area of preventing conflicts of interest. Our Report Centre receives requests for advice or complaints about alleged crimes or violations committed by public officials. There are an increasing number of complaints about conflicts of interest - 712 were received in 2005 compared with 570 in 2004 and 495 in 2004. An important source of information is also other institutions and mass media. If the information is pursuable, an administrative investigation is initiated. The Bureau can determine the administrative liability and

impose sanctions on public officials, including asking that illegally gained income be returned to the state budget. In 2005, the Division of Control of Activities of Public Officials prepared 474 answers to different reports and completed 231 administrative investigations. In the course of these investigations, the Bureau checked 522 asset declarations of public officials. In 2005, 109 state officials were charged with administrative liability for failure to observe restrictions outlined in this law. The most common cases of violations were when public officials made decisions about themselves or close relatives, such as granting a bonus, employing a relative, or supervising a matter in which they had a personal interest etc. To promote a better understanding of ethical behaviour and how to avoid a conflict of interest situation, the Bureau provides regular training. In 2005, the Bureau reached out to about 800 officials.

Codes of ethics are another practical instrument by which to set standards of ethics and to promote ethical behaviour among public servants. As I just mentioned, it is one of priorities of the national anti-corruption policy. Over the past few years, most public institutions at the state level have developed codes of ethics in Latvia as well as some municipal institutions. Today, 105 state institutions have their codes or declarations of ethics, and several other state institutions have prepared such codes or have integrated them into internal regulations. Comparatively, only seven municipalities have developed such codes. Even if some of these codes do not have a strong enforcement mechanism, the fact that institutions were required to develop such codes was a good way to make them to think about the relevant issues.

In 2005, two years after the Bureau's work on the enforcement of the conflict of interest law, a survey was carried out in which the results indicated an increased awareness that conflicts of interest can lead to corruption. In another more recent opinion survey of public officials, conducted in the summer of 2006, 75% of the respondents acknowledged that respect of ethical norms is important for the public service. The same survey revealed that 63% of the respondents considered that among the most important reasons that lead to corruption in the public sector is the lack of respect of ethical norms.

What are the main lessons to be learned from the experience of the Bureau in the area of preventing corruption and conflict of interest? Conflict of interest regulation is an efficient instrument to promote ethics. Through our preventive work, the awareness of public servants has significantly increased about ethics and restrictions provided in the law. Overall, administrative corruption is decreasing. Also public trust in the Bureau is increasing and, in an indirect way, in the integrity of the public service as well. This is shown, for instance, by the increasing number of reports of corruption received by the Bureau. However, more work needs to be done to increase awareness about ethics in society and to increase intolerance towards corruption. The political elite often sees ethics as general statements rather than as standards that should be upheld in public life, and do not feel required to show personal examples of respecting these standards. Heads of public institutions also bear an important responsibility in implementing norms of ethics. Their work is one of the most efficient instruments, as it serves as an example that their colleagues will then need to follow. Finally, not everything can be regulated by the law. Even when it is, some people try to get round it. There is also always potential for new

conflicts of interest. Often the scandal of individuals, who have misused their position or acted in an unethical way, damages the confidence in the public sector as a whole. However, each individual example shown by a public official, politician, or individual public sector institution can help to strengthen public trust and to raise the standards for all as to what level of conduct can no longer be tolerated.

Muhammad Akram Khan

ROLE OF AUDIT IN FIGHTING CORRUPTION

Summary

Corruption is distinct from fraud as it does not leave any telltale in the records of an organization and the auditors, who generally work with documents, find it difficult to play an effective role in fighting corruption.

The paper has four parts. Part A aims at defining the role of audit in fighting corruption. It raises and answers some of the concerns that the auditors may have. It also shows that participatory auditing can be one of the options where corruption has taken place as a result of collusion.

Part B deals with corruption audit process using the usual methodology of planning, executing and reporting. While discussing planning for corruption audit the paper introduces the concepts of “Inventory of Corruption Opportunities” and “Corruption Opportunity Test”. The execution of corruption audit suggests a greater role for public and employee surveys.

Part C highlights the role of performance auditing as a tool of corruption audit. It shows how findings relating to diseconomy, inefficiency and ineffectiveness can also indicate existence of corruption.

Part D deals with strengthening the Supreme Audit Institutions (SAIs), as audit against corruption cannot take place unless there is an enabling environment. The paper makes recommendations for strengthening the role of SAIs and the action that the international community should take to support the SAIs of the countries willing to commence with corruption auditing. Part E makes some concluding remarks.

A. Role of Audit in Fighting Corruption

Nature of Corruption Auditing

Many people use ‘corruption’ and ‘fraud’ interchangeably. The present paper asserts that these two terms need to be used distinctly. ‘Corruption’ takes place in the form of bribery, kickbacks, commissions, or other benefits without leaving any trace in the official records. ‘Fraud’ consists of deriving undue benefit by bypassing some controls or bending some rules. There remains some evidence in the records to trace the fraud. In the same tone, ‘corruption auditing’ needs to be distinguished from ‘fraud auditing.’ There is a considerable volume of literature on the role of auditors in detecting, preventing and investigating fraud. Almost all professional bodies of auditors have published standards and techniques about fraud auditing. There are training courses being offered by a large number of organizations on fraud auditing. There is also an Association of Certified Fraud Examiners who awards certificates to those who qualify their examination. *The Internal Auditor*, journal of the Institute of Internal Auditors, USA, has devoted a regular feature to fraud auditing and reporting.

General Lack of Concern with Corruption Auditing

There is, however, very little discussion in the literature on corruption auditing. The United Nations Office of Drug Control and Crime Prevention, Vienna, is spearheading the campaign against corruption. It has published a wealth of literature on corruption, including an Anti-Corruption Tool-Kit in its *Manual on Anti-Corruption Policy*. It has identified thirty tools for fighting corruption¹⁰. However, auditing is not even part of this list. The *Manual* does devote, though, one page to auditing at a later stage. The INTOSAI *Journal of Government Auditing*, the most prestigious publication of the world government auditors, has published only two articles during 2000-05 on corruption¹¹. There seems to be a general neglect of this subject in the methodology tool-kit of the auditing profession.

The auditing profession, as it has evolved, has its roots in the private sector where audit against corruption is not a serious concern of the stakeholders. They are more interested in fraud or theft of their assets. Corruption is not their worry, as who would bribe an employee of a private company for getting a service or buying a product? Corruption in private sector can take place when the top management decides to bribe government functionaries to get some benefits. In such a situation, why would they ask their auditors to report on corruption? The only situation when corruption could be of some concern for the stakeholders of private companies is when, in very large organizations, some of their employees try to receive bribe in procurement of goods and services and recruitment of

¹⁰ *United Nations Manual on Anti-Corruption Policy (draft)*, Vienna: UNODCCP, 2001, pp.24-25. (www.ODCCP.org/corruption.html)

¹¹ Sparberg, D, “Fighting Corruption and Fraud”, *IJGA*, Washington (27:3), July 2000, pp10-12; & Siame, F.M., “Contributions and Challenges in the Fight Against Corruption – an Auditor General’s Perspective,” *IJGA*, (29:4), October 2002, pp.7-9.

staff. To control this type of corruption the private sector companies have evolved strong internal controls. Briefly, the methodology and standards of corruption auditing have not developed, since most of the standard setting in the auditing profession has taken place in the private sector and corruption has not been a concern of the private sector. In a very legitimate sense, corruption auditing is a concern of the government auditors or public sector internal auditors. Significantly, they have remained dormant in methodology development in this field.

Auditors' Dilemma

Corruption is a highly complex phenomenon. The parties involved leave very little telltale in the form of irrefutable hard evidence. Most of the corruption takes place in an informal manner and under the dark cover of isolated contacts. At times it does not even require a spoken word. Mere eye contact can establish a relationship of corruption.

The auditors find themselves at cross-purposes with the society. The social expectations are that the auditors should play an effective role in reducing, if not eliminating, corruption. The auditors, whose profession makes them concentrate on documentary or physical evidence, often find it hard to gather such evidence. They feel that they cannot do much about corruption. In such a situation, what precisely is the role of the auditors? The paper aims to define the role of auditors in fighting corruption.

Type of Corruption the Auditors Can Deal With

In their professional work, while working in a large bureaucratic organization or a government department, auditors 'smell' corruption but feel that they are helpless to deal with it. They do not find handy tools in their tool-kit to handle the problem. Auditors know that they cannot physically see all transactions and all situations. An example is the bribe taken by a police constable from a violator of traffic signal. No one can ever detect it until the policeman is caught red-handed. The auditors are not in the business of catching people 'red-handed.' Thus, they cannot do much in such cases. Similarly, the auditors do not deal with *political, social, or cultural* corruption. Even when we exclude these areas, the auditors still come across corruption in government offices and in large public and private organizations that fall under the purview of the auditors' routine work. There could be situations, in large public or private sector organizations and in government departments, where the rules and regulations are quite foolproof, yet corruption continues to flourish because of poor implementation. The auditors can point out these weaknesses as potential sources of corruption. The rules, regulations, procedures and operational standards of these organizations often leave lacunae, which create opportunities for corruption or at least protect corruption. Auditors deal with such phenomena.

The present paper deals with corruption of public employees working in government departments or public corporations, where the citizens are the losing party. Such corruption may be protested by the citizens if the delivery of certain services is significantly sub-standard. The auditors may 'listen' to the noise of protests by the public

on service delivery and ‘smell’ some sort of corruption. However, corruption may remain hidden from auditors if the citizens are colluding with the public functionaries. For example, in case of a corrupt deal between an income tax officer and a businessman where the former reduces the tax obligation by accepting bribe from the latter, there is collusion between the two parties. None of them is likely to protest or reveal the deal. Both are benefiting from it. Such cases of collusion cannot be covered by any audit examination. The auditors of these organizations have a real challenge in auditing against corruption.

Enabling Environment for Audit against Corruption

Corruption requires a multifaceted attack. It requires, for example, a set of regulations against corrupt practices, a code of conduct for employees and vendors, awareness-raising campaigns, training of staff, internal controls, sanctions and incentives, protection of whistleblowers and an open approach towards information reporting. Audit is only one such mechanism. The auditors can succeed only if the enabling environment exists for fighting corruption. Effective corruption control requires commitment and involvement of all agencies, employees, customers, external service providers, in brief, all citizens of the society.

The scope of auditors’ contribution has a close relationship with the ‘tone at the top’. If the top management, in particular, the chief executive of a company or a minister of a department or a prime minister of a country engages in corrupt practices, the auditors cannot make much contribution as these very persons would not let the auditors get closer to anything as auditing against their corruption. Obvious examples are the cases of Enron and WorldCom in the USA where the top executives were involved in corruption.

Corruption and Audit Evidence

The auditors should remain aware of the limitations of their professional work. In case of corruption, they can hardly *detect* or *investigate* into the actual event of corruption, since the culprits, generally, do not leave any documented evidence. It is, therefore, important to know that the auditors cannot quantify corruption nor can they report the actual event of corruption. They can only indicate the existence of *opportunities for corruption*. Such a report can become basis for corrective action by the government to forestall corruption in future or minimize the opportunities for corruption.

Corruption and Collusion

The situations where the systems and procedures provide an opportunity for corruption are relatively easy for the auditors to handle and make a recommendation. However, the auditors may come across situations where the systems and procedures are satisfactory as they were designed to prevent or minimize corruption. However, corrupt persons find out ways to by-pass these systems and procedures. It is usually done through collusion. For example, in public works departments, there are usually detailed procedures for awarding contracts, preparing bill of quantities, supervising the contractor, controlling and

supervising the work and certifying contractor invoices. Generally, these procedures have sufficient built-in internal controls that can prevent corrupt practices and ensure good quality of work by the contractor. In practice, these procedures are befooled by collusion. For example, all the officers from top to bottom, who are required to ensure quality and compliance with contract, join hands. They share the “booty” taken from the contractor, who obliges by reducing quality of the work done, by an institutional arrangement, whereby all paper-work is done in a neat manner. All reports are prepared with due dates on them and all certificates are signed by the competent authorities. Only the work claimed to have been done is not in proper order. The entire administrative machinery which was engaged to make sure that the work was of right specifications join hand to defeat the system. In such a situation, what can the auditors do? They do not see any signs of corruption opportunity. Everything is neat and fine on paper. In such a situation, participatory auditing is the answer. The auditors should involve the users of the facilities built by the public works department in conducting the audit.

Participatory auditing is one option.

Participatory auditing is a new idea and is yet at conceptual stage. Experienced auditors, who have sensed collusion quite often without being able to do much about it, have started considering the possibility of involving the clients or general public in ascertaining if there was a proper delivery of the public services funded from the public budgets. This is a major departure from the traditional auditing approach where the auditors are not supposed to go ‘beyond the books’. The participatory auditing techniques have yet to be developed fully. However, germane to it are the tools of general public surveys or household surveys for determining user satisfaction from the services or facilities provided by a public sector organization or government department.

Seen in this perspective, if the auditors adopt participatory auditing in the example under discussion, they should try to get the opinion of the users of the works completed by the public works department. For example, if the public works department has built a residential building, the users can talk about the quality of work relating to plumbing, woodwork, sewerage, electricity, etc. Similarly, the public works department may have built an office building for another department. The users of the building can also give some information about the design and quality of the work. In both cases, the auditors can design a survey to find out if the users of the building find it according to their needs and are of right quality. The audit criteria could be the approved design of the building, the main features of which could be made available to the users by the auditors, along with the survey questionnaire, asking them if they find the actual facilities according to the design. The auditors may come across independent assessments by the users, which can lift the curtain on any corruption that may have gone into the whole process. At least, the departmental machinery would be made to stand in dock for answering the questions from the public or users. This would also have a deterring effect. Once the officials in the public works department know that the users of the work would get an opportunity to make an assessment of quantity and quality of the work, they may be careful in indulging in corrupt practices. Thus, corruption can be prevented by giving a ‘voice’ to the general public, if the work done is being used by the general public, or to the other government

departments if they are the users. This democratic approach would have a deterrent effect on corruption. The idea is well-known to economists¹². It is time the auditors also start practicing it. A real life example of this technique has been quoted by Vivek Ramkumar and Warren Krafchik about a Philippines-based NGO, *The Concerned Citizens of Abra for Good Governance (CCAGG)*, which gets feedback from the community about the public works claimed to have been completed by the government departments in a particular area.¹³

It is important to mention that the concept of social audit used by some civil society organizations mixes up fraud auditing with corruption auditing¹⁴. In fraud auditing, the evidence is extracted from the documents of the organization. But in case of corruption auditing, such evidence simply does not exist. The role of participatory audit in case of corruption is focused in identifying any *opportunities for corruption* which the existing system may allow to nourish, while in case of fraud auditing, it is detection of fraud, if it has taken place.

What if the citizens and public functionaries join hands?

There is a second more serious situation of collusion where even ‘voice-to-the-public’ option does not work. It is a situation where the collusion takes place between the general public and the government functionaries and the only loser is the government. For example, as cited earlier in this paper, a businessman can collude with an income tax officer or with a customs official for evading taxes and duties. A violator of traffic rule can collude with the police constable on duty to avoid fine. A politician exercises his or her influence, bribes a government functionary and gets license for doing business in a particular sector. In such situations, the ‘deal’ is between the citizen and the government official where the latter accepts a lower level of bribe for foregoing a higher level of government levy or granting a lucrative opportunity. There would be no complainant in this case. In such situations of collusion, there is hardly anything that the auditors or even an executive supervisor of a department can do. There would be no documents or other evidence to show that corruption has taken place. What should the auditors do in this situation? There is not much that the auditors can do in such cases of collusion. One recommendation could be to design systems where the occasions for personal contact between the public and the government functionaries are minimized. For example, the system could provide that the businessmen or their tax advisors would not visit the income tax offices and would submit all the information electronically. Similarly, the system of having income tax inspectors visiting the business premises could be disbanded, making self-assessment a going concern. These systemic changes should be

¹² See, e.g., *World Development Report*, Washington: World Bank, 2004.

¹³ Vivek Ramkumar and Warren Krafchik, *The Role of Civil Society Organizations in Auditing and Public Financial Management*, pp.15-17. [www.cbpp.org]

¹⁴ For example, Vivek Ramkumar and Warren Krafchik, in their valuable paper , *The Role of Civil Society Organizations in Auditing and Public Financial Management*, refer to social audit by an NGO, MKSS (pp.11-13). The NGO uses the documents of the project as a basis for the audit evidence. In case of corruption, such evidence does not exist. [www.cbpp.org]

preceded by a wholesale system of documenting the economies. However, these are beyond the domain of an auditor. Even such an approach would not prevent all types of corruption, for example the traffic constables' bribe that we mentioned earlier in this paper can still take place.

In such situations of collusion, corruption can be handled only through investigation into the wealth and financial state of government employees, about whom there is some evidence of living beyond means, such as holding sumptuous parties on wedding ceremonies of their children, or having foreign trips with family members and staying at expensive places, etc. This is not an area for audit. Anti-corruption agencies have a role to play here.

Non-traditional Sources of Information

Traditionally, the auditors are supposed to rely on the information available within the organization: from its own records, books and reports. They are not supposed to collect information from outside and quote it to reach any conclusion. However, for corruption auditing this approach is quite simplistic. There are occasions when the management, in collusion with the vendors or as a result of bid-rigging, enters into procurement contracts at exorbitant prices as compared to open market prices available to an ordinary person. Keeping one's eyes shut to this commonplace information on the plea that the auditors are not supposed to hunt for outside information is overly simplistic. Now information about the prices of various products has become available on Internet as well. Besides, getting information about products available in the open market and comparing them with the lowest quoted bids should be part of the standard audit exercise if the auditors have to succeed in corruption auditing. The present writer came to know, in his practical experience, that the organizations bought goods and services at several times the open market prices on the plea that the purchases were made at the lowest bid price. This should not be an excuse for making uneconomical purchases. However, it too has a caveat. The management should not use this technique of making procurement from those sources which did not participate in the open bidding process. If they find out that the lowest bid price is significantly higher than the open market price, they should scrap the whole bidding exercise as it may have an element of collusion or bid-rigging. It should not be an excuse for the managers to make purchases from those sources which did not participate in the bidding process.

Corruption and Discretion

At times corruption emanates from a perfectly legal source: the law or the regulations provide discretion to the decision-makers. The person making the decision uses his or her discretion in such a manner that it provides undue benefits to the decision-maker or to his or her family or friends. Discretion is a sort of necessary evil as not every situation can be visualized at the time of framing laws, regulations and rules. Some unforeseen situations keep on cropping up. For providing flexibility to decision-makers, some discretion, perhaps, is necessary in all systems. However, in corrupt environments, the discretions are used to manipulate the state assets and to derive undue benefits for oneself

or for one's family and friends. A common example in countries like Pakistan, for example, is the allotment of state land by the head of the state or prime minister at dirt-cheap rates as compared to market process. Another example could be to offer employment to undeserving persons without following due process. Still another type of corruption could be the use of discretion for awarding contracts of procurements.

There is nothing that can be done to forestall the corruption of granting state lands if the law itself provides such discretion. In situations like this, only authorities like the head of SAI of a country can raise the issue to abolish such a law. At lower levels, the auditors should treat such laws and regulations as *opportunities for corruption* and recommend that the parliament issue binding guidelines for using the discretion. It should be possible according to the law, in that case, to take legal action against the decision makers who violate the guidelines. In case of unmerited appointments, the state law must be amended to disallow any discretionary appointment and make it mandatory to follow the usual methods of recruitment based on merit and objective evaluation. The awarding of procurement contracts, similarly, should be covered by open competitive bidding. As a general rule, where some form of discretion exists, the auditors should insist on the development and publication of guidelines based on objective and transparent criteria for using the discretion by the decision-makers.

Role of Auditors in Corruption Investigations

Auditors may come across situations, during their examinations, which smack of corruption. Since investigation requires different standards and skills, the auditors cannot get into the business of investigating a suspected case of corruption. However, they can forward extracts of their reports to investigating agencies for further probe.

As compared to auditing, investigation is a different area of oversight. However, auditors can play a vital role in assisting the agencies responsible for investigation against alleged cases of corruption. The investigating agency could be an internal entity, some anti-corruption commission, police, judiciary or a specialized body for a mega corruption case. The investigation may be initiated on a complaint from a citizen, employee, auditor or a supervisor in an organization. Internal auditors usually have more diversified and detailed knowledge of operations in different parts of the organization than the investigating agency staff that may be deployed only for a particular case. The internal auditors can assist the investigating staff in interpreting various rules, in explaining various practices, in sharing some of the confidential information that they may possess or discussing technical details of operations. The internal auditors can pinpoint areas of excessive cost and weaker controls which can help the investigating staff in detecting corruption.

Figure 1 below summarizes the role of auditors in corruption auditing.

Figure 1 Auditors' Role in Corruption Auditing	
Situation	Auditors' Role
Lack of Documentary Evidence	Point out Opportunities for Corruption
Collusion between Contractors and Public Functionary	Resort to Participative Auditing
Collusion between Citizens and Public Functionary	No Role
Discretionary Powers of Public Functionary	Insist on Public Disclosure of Guidelines for the Use of Discretion
Detection of Corruption	No Role
Investigation of Corruption	Cooperate with Investigators

B. Corruption Audit Process

Objective in Corruption Auditing

As a starting point for corruption auditing, the auditors should hold on to the traditional assumptions about the behavior of the staff with respect to organization's business and should not commence audit planning with the suspicion of corruption. However, at the stage of familiarization of the organization and its operations, they should remain alert to the opportunities for corruption. Therefore, they should proceed cautiously. In the process of normal audit planning, they should try to determine the possibilities of corruption through review of departmental laws, regulations, rules and procedures. Besides, in the process of interviews of key personnel, they should identify any opportunities for corruption.

The audit plan can state the audit objective of corruption audit, besides other audit objectives, as follows:

One of the objectives of this audit is to assess the opportunities of corruption in ... (name the function or operation under audit) of the ... (name) the organization and to evaluate the efficacy of the existing control environment in preventing it.

Planning for Corruption Audit

The corruption audit planning process would also pass through the familiar audit planning stages. However, it will have some specific features as discussed below.

The full range plan for corruption audit would involve the following steps:

- (a) Knowing the Audit Entity
- (b) Developing the Audit Criteria
- (c) Building Inventory of Corruption Opportunities
- (d) Applying Corruption Opportunity Test (COT)
- (e) Writing the Audit Plan

Knowing the Audit Entity

The familiarization process will start with a detailed review of applicable laws, regulations, rules and operational standards with a view to understanding the audit entity and its operations. It would enable the auditors to understand the mandate, mission, objectives and main operations of the organization. It will also inform the auditors about the organization's structure, staffing, locations, clientele and operational plans. While doing so, the auditors will remain alert to the identification of possible opportunities for corruption.

Developing the Audit Criteria

The audit criteria for corruption audit should be developed in the light of good management practices accepted in the field of operation under audit. The auditors should familiarize themselves with the lead practices in the field through study of various manuals and background literature on the subject. The audit criteria, as the term itself specifies, acts as a benchmark to see if the organization's systems and procedures comply with them. Any gap between the criteria and the actual systems and procedures, indicates possibilities of corruption. For developing the audit criteria, the auditors should keep in view the applicable laws, rules, procedures, and controls in respect of each operation under review and ask the following question;

For managing this operation (...name the operation), what should the management do to make sure that the operation is performed honestly, economically, efficiently and effectively?

An answer to this question would help the auditors develop the audit criteria as they proceed further from one segment of the client operations to the other.

Building Inventory of Corruption Opportunities

Review of basic documents, interviews with key personnel and development of audit criteria would enable the auditors to build an inventory of corruption opportunities in the organization under audit. The inventory of corruption opportunities does not indicate the existence of corruption. It is a list of theoretical possibilities of corruption in the given situation. For example, if the auditors are auditing procurement, they should conceive the total procurement cycle and then try to see, theoretically, what could be the opportunities for corruption, given the audit criteria and the organization's rules and procedures? A list of such possibilities constitutes *Inventory of Corruption Opportunities*. This does not show that all these opportunities are being availed of by corrupt people in the organization. However, it gives the auditors a framework for further focus during the field work. The method of building this list is to look for certain *indicators of corruption*. If the auditors perceive that these indicators exist, then they can include them in the opportunity for corruption in this list.

Applying Corruption Opportunity Test

Once the auditors have an inventory of corruption opportunities, they should proceed to prepare a short-list of these opportunities in the environment of the organization under audit. This can be done by applying *Corruption Opportunity Test (COT)*. They should try to figure out the status of the organization or its various operations with respect to opportunities for corruption. This is a unique tool that this paper is advocating for corruption audit.

The objective of the Corruption Opportunity Test is to determine if the actual circumstances prevailing in an organization are conducive to corruption and if so, to what

extent. It is possible that the systems and procedures of the organization are not robust, yet the culture of the organization or the overall environment of the country act as a deterrent and people still do not indulge in corruption at a significant scale. It could be vice versa as well. The systems and procedures of the organization may be quite robust, yet the actual practice may provide opportunities for corruption due to environmental reasons or due to laxity of the top management or due to non-implementation of the rules against corruption. Thus Inventory of Corruption Opportunities is a theoretical possibility. By applying Corruption Opportunity Test, the auditors go a step further to assess the likelihood that the opportunities for corruption are actually being availed by corrupt people in the organization. If they assess that the opportunities for corruption exist and the probability of their existence is high, then they should plan an extensive examination of organization's operations. During field work, in such a situation, the auditors should select larger samples of various transactions from the high corruption-risk areas to confirm their assessment emerging from the application of COT.

The auditors can apply the COT both at the level of organization and at the level of specific operations or functions under audit. For example, if the auditors are planning to audit human resource management or procurement or travel functions of an organization, it would be pertinent that the COT exercise is focused on these areas. However, where the whole organization is subject of audit, the COT should be focused on the entire organization. In that case, the objective of auditors will be to identify those functions or operational areas where the risk of corruption is the highest.

Developing the Corruption Opportunity Test

Each corruption opportunity is based on some indicator for corrupt behavior. The auditors should look for the existence or absence of these indicators while developing and applying the COT. The auditors will have to go around and feel for themselves how the business of the organization was going on in practice. It is possible that rules and regulations are adequate but in practice they are being violated and bent according to whims and wishes of certain people. While reviewing the list of corruption opportunities, the auditors should carefully pose the following question in each case:

“What is the probability that the applicable rule, regulation, procedure, instruction or practice could be misused or bypassed in this case to indulge in corruption?”

Or

“Alternatively, are there controls in place that would forestall a corrupt person to indulge in corruption by abuse of authority or misuse of discretion or misinterpretation of rules in this case?”

At the same time, while reviewing the environment of the organization, the auditors should assign a score to each corruption opportunity according to their best judgment. In their working papers they should record, why they have assigned a particular score to a particular indicator, so that the audit supervisor is able to review the score. If the auditors assess that the likelihood of corruption is there, they should allocate an appropriate score according to their judgment of the situation. For each indicator of corruption, the auditors should assign a score and arrive at percentage of the total score.

Reply to the above questions would depend upon the auditors' judgment. However, the judgment can be quantified as follows on a scale of 0-9, where zero stands for a *dry land* and 9 for a *green pasture* for corruption. A suggested ranking is as follows:

- None 0
- Minor 1-3
- Medium 4-6
- High 7-9

As a general rule of thumb, an organization scoring 70% or above on COT is a green pasture for corruption and immediate action is required to streamline its systems by changing laws, regulations and management practices, including replacement of key personnel. An organization scoring between 40%-70% requires attention and some of its environment needs attention. The auditors should identify the areas where reform is required. When an organization scores less than 40% on the COT, there is time to wait and see. It means the systems and procedures are in place and merely enforcement action is required to prevent corruption.

Corruption Opportunity Test Exercise

The auditors should plan COT application as a distinct exercise as part of the audit planning process. The exercise would involve the following:

- (a) Interview the senior management and operational management to enlist perceptions of the senior and operational management about areas prone to corruption.
- (b) Interview the staff and selected users of various goods and services being delivered by the auditee department or organization.
- (c) Interview some other staff of the organization at the lower level.
- (d) Refer back to the initial assessment relating to the state of internal controls in mitigating the risk of corruption

For the purpose of COT application, the auditors would need to develop an interview questionnaire. A specimen of this questionnaire for interview of senior management is given at Figure 2 below¹⁵.

¹⁵ It is interesting to note that Samuel Paul has also suggested a similar approach for incorporating citizens' feedback into performance audits. See Paul, Samuel, *Auditing for Social Change: Learning from Civil Society*, pp.13. Paper presented to the 6th Global Forum on Reinventing Government towards Participatory and Transparent Governance, 24-27 May 2005, Seoul, Republic of Korea. [www.unpan.org.]

Figure 2

Corruption Opportunity Test Interview Questionnaire For Senior Management

Objective of Interview

Give background information to the interviewee about the purpose of interview stating that the primary purpose of the discussion is to:

- Identify key goals and objectives in his or her area of responsibility.
- Gain an understanding of the key business processes in his or her area.
- Identify any opportunities of corruption that may potentially exist in the organization

Specific Questions

1. What is your main business? How do you perform your functions? What are your key business processes?
2. Have you taken any initiative in the recent past to improve your operations? If so, please give us a brief summary of the initiative and the achievement so far?
3. Do you think your organization has opportunities for corruption? If so, what are those and how can corrupt persons avail of them?
4. What is the probability that someone will actually avail of the opportunity of corruption and the system will not signal it?
5. Without naming any person, could you indicate the operations where corruption does exist within the organization? If so, what do you think is the quantum of such corruption?
6. What are the key controls in your organization to ensure that you achieve your objectives both qualitatively as well as quantitatively?
7. What do you think are the possible remedial measures to minimize or control corruption within the organization?
8. What sort of resistance can you expect if the corruption control measures suggested by you are actually implemented?

Similar questionnaires would need to be developed for interviews with general employees at lower level regarding their perceptions about corruption in the organization and for interviews with users of the goods and services being delivered by the department or organization under audit.

The auditors should tailor the COT exercise according to the external environment in which the audit is taking place. For example, if the audit involves assessment of corruption risk in a major disaster relief operation like Southeast Asian tsunami of December 2004 or Pakistan earthquake of October 2005, the COT exercise must consider the quantum and form of the aid flowing in. Also, they should remember that the

disruption of normal administrative channels can create more opportunities for corruption. Similarly, if the audit is taking place in a war-torn country like Afghanistan or Iraq, the risks of corruption would be higher and diverse than if, for example, the audit is taking place in government department of a stable country. The interview questionnaire would be tailored according to the situation.

While conducting COT exercise, the auditors need to be alert to some situations that are more prone to corruption as compared to others. For example, the likelihood of corruption increases if

- the operations of an organization are being conducted as an emergency to meet a disaster, and excessive aid is flowing from various directions.
- the accountability of funds is rudimentary and auditing arrangements are not well-entrenched.
- the administrative infrastructure at the local level is missing.
- there are no local markets for the purchase of goods and services needed.

While applying the COT, the auditors need to remain vigilant to the following:

- (a) Corruption could be sporadic, occurring in isolated intervals without any apparent order.
- (b) Corruption could be systemic, arising from institutional attributes.
- (c) Corruption could be petty or grand. In the former case, it may take the form of government functionaries indulging in petty bribes to extend small favors to speed up certain procedures. The grand corruption can take the form of award of large contracts, grant of exemptions and refunds in taxes and can involve large sums.
- (d) Corruption could take place in one department or agency or it may have linkages in other departments or agencies.
- (e) Corruption beneficiary could be a single person in an organization or it could be an organized mafia, sharing the booty in a systematic manner.

Analysis of these factors would help the auditors in assigning scores while applying the COT.

Executing Corruption Audit

Audit Program

The audit execution phase starts with the end of planning phase and the beginning of the field work. The first task that the auditors have to perform is to write an audit program tailored to the objectives of the corruption audit. They would follow the standard procedure for developing an audit program. For the purpose of focusing on possibilities of corruption they would embed the audit program with two types of issues:

- General issues relating to common functions in most of the organization
- Specific issues relating to the specialized operations of the organization

General Issues

For focusing audit on detecting opportunities of corruption, the auditors should build into the audit program following general issues:

- Transparency
- Good Governance
- Economy
- Efficiency
- Effectiveness

The general issues would pertain to such common functions as general administration, procurement and human resource management of the organization or department being audited.

Specific Issues

The specific issues would relate to the technical or specialized operations of the department or agency being audited. For example, these issues would relate to review of specific laws and rules relating to the technical work of the department such as Income Tax Law, or Customs Law and rules and procedures framed subordinate to these laws.

Confirming the Understanding

With the inventory of corruption opportunities developed at the planning stage, and short-listed by applying COT, the auditors should commence the field work for confirming or verifying their understanding of the short-listed opportunities for corruption through larger, systematically drawn unbiased samples. It would routinely require discussions with the relevant staff and interviews with concerned officials. The auditors would verify if the controls claimed to be in place were in fact operational in the organization and have been so throughout the period under audit. The field work may unravel areas of general consensus and also areas of disagreement. The auditors should carefully analyze these two types of areas. Generally, the areas where exists a consensus among the management and staff about the possibility of corruption should be picked up by the auditors as of their primary concern. This would provide the auditors with a list of confirmed opportunities for corruption in the organization, although they would not have evidence that the corruption has taken place and who is involved. This is the area of investigation and falls short of the responsibility of the auditors. .

Client or Public Surveys

The nature of corruption audit requires the auditors to break away from their traditional mould and to adopt innovative techniques. The traditional view that the auditors should remain restricted to the internal records and should not venture to collect outside information does not fit well with the concept of corruption auditing. The present paper suggests that the auditors should collect information from general public, users of government facilities and client organization, if necessary.

One of the steps in the fieldwork of audit could be survey of clients or general public and survey of opinions of the employees. The auditors would undertake this work in the light

of their planning decisions. Generally, a decision to conduct public survey should consider if the organization is providing any service to the general public. A survey of the general public or users of the service would unravel corrupt practices if they are in vogue as many people would like to raise their voice if they are not satisfied.

Surveys are part of the auditors' field work. At this stage, the auditors should develop necessary questionnaires for the survey, decide on the sample size, and select the areas to be covered and method to be adopted. The auditors can consider launching a survey of the main clients or general public of the department regarding their perceptions about the existence of corruption in the department. This would be particularly rewarding where the nature of corruption does not involve collusion of the citizens with the organization's employees. In such situations, the general public or clients of the department tend to be more vocal and focused if they perceive that corruption is rampant.

Employee Surveys

Still another option at this stage of field work is to conduct a survey of organization's employees. Such a survey would be appropriate if the size of the organization is large and is spread out at different locations. The design of this survey should keep it in view that employees have a built-in tendency not to speak out against corrupt colleagues and management. Therefore, the questionnaire should be couched in such a language that people have the opportunity of making hints about corruption without coaxing them to name anyone. There could be questions which cross-check on earlier replies to weed out spurious replies by the employees. The survey of employees could be web-based, providing e-mail links to all of them.

Designing Client or Public Surveys

The auditors may decide to conduct a survey of the clients or general public for assessing the economy, efficiency and effectiveness of service delivery by public agencies. They should use the plan of service delivery as their benchmark and then collect data on the following indicators (Figure 3 below) for comparing the extent of achievement of results with the plan.

These guidelines are for small scale surveys about services being delivered by an organization in a specific area. For large scale surveys, spread over vast areas of the entire country, survey would require higher technical skills for designing questionnaires, collecting and analyzing data. The present guidelines would remain relevant but have to be modified considerably according to the size of the program. The auditors can use the indicators given in Figure 3 below as a guide for designing the survey questionnaire:

Figure 3

Designing User Satisfaction Survey Questionnaire Indicators to be Included

1. Awareness of the respondents about

- Objectives
- Coverage
- Scope and expected benefits and cost of service being delivered by the public agency
- Inputs, costs and resources used

2. Quantities being delivered (outputs)

3. Quality of the service

4. Waiting time to get the service started

5. Appropriateness of service delivery with respect to

- Reliability
- Periodicity
- Timing
- Regularity
- Need of the respondents

6. Overall satisfaction of the users with service delivery

7. Response time in case of break-down of service

8. Politeness in the behavior of the service providing staff

9. Perception of the users about corruption in the department or agency

10. Bribes paid for getting the service

11. Tips paid and necessary to get the maintenance

Reporting Results of Corruption Audit

The reporting results of corruption audit would follow the usual audit report format. However, the focus of the report would be recommendations to plug-in holes in the organizations' operations, systems, procedures, rules and regulations that can provide opportunities for corruption. The audit report should not and cannot point finger to any particular person with charges of corruption. The role of corruption audit report is mostly to prevent corruption or to suggest steps for minimizing opportunities for corruption.

C. Using Performance Audit as a Tool of Corruption Auditing

It is generally understood that performance auditing can help detect corruption¹⁶. A properly planned and executed performance audit would highlight areas of diseconomy, inefficiency and failure to achieve results and impact. The argument is that if a project or program has been planned properly, it should be possible to implement it with due regard for economy and efficiency and it should achieve its results. If it exceeds its planned costs significantly or takes much longer than envisaged or does not achieve what was intended, then there is a possibility that the people involved in its management may have indulged in corruption.

Although the above argument is plausible, yet the existence of diseconomy, inefficiency or ineffectiveness is not a conclusive proof of corruption. There could be genuine reasons of human failings, or complex and difficult environmental factors which inhibited the achievement of objectives. There could, simply, be a case of unintentional human negligence, not taking into account all the risks and costs. Thus performance auditing carried out in a routine manner may not indicate a concrete evidence of corruption.

Indicators of Corruption Highlighted by Performance Auditing

Performance auditing can, however, provide some clue to corruption if it exists. For this purpose, the performance auditors need to go a step deeper into the issues identified during the audit planning stage.

Generally, if the findings of the performance audit are of the following nature, the suspicion that corruption had taken place in these projects or programs would be quite high:

Corruption Indicated by Lack of Economy

- Cost overruns have taken place as a result of subsequent increase in the scope of work which has not been approved by the competent authority.
- The accountability mechanism for exceeding the budget is weak. It means, if a program manager exceeds his or her budget, he or she can get away with it, without much accountability.
- The unit cost of some components of the total procurement is exorbitant, while the overall bid price is the lowest. The components with higher prices are subject of repeat orders.
- Bids for competitive procurement may be cancelled frequently to help a specific vendor get the award of the contract.

¹⁶ For example: Dye, Kenneth M., & Rick Stapenhurst, *Pillars of Integrity: The Supreme Audit Institutions in Curbing Corruption*, Washington: EDI, The World Bank, 1998, 25pp.

- After competitive bidding, the prices are increased by adding some small segments of goods and services not originally conceived.
- Procurement is rushed at the year-end to consume the budget.
- In case of privatization, the friends, relations or front men of persons making the decision of privatization purchase the public asset. An obvious conflict of interest exists.
- The options analysis for justifying the project or program was based on fake data or false assumptions.
- Based on bogus assumptions, the decision to provide in-house services as compared to outsourcing through competitive bidding may be with the intention of having access to a greater chunk of the budget and thus creating opportunity for the staff to indulge in corruption and misappropriation.
- Large known dealers in certain line of products systematically avoid participating in the open bidding process of the organization. Usually, they do not like to get into the 'hassle' of getting their invoices paid in a corrupt environment.

Corruption Indicated by Lack of Efficiency

- Huge idle capacity is created or unnecessary equipment purchased without significant possibilities of use even over time.¹⁷
- Expenditure on maintenance is disproportionately high soon after the completion of the project.
- Regular maintenance is neglected and infrastructure is allowed to deteriorate while new projects are being planned. [The intention of neglecting routine maintenance is to divert funds toward new projects.]
- Poor quality of construction, shoddy materials, choked gutters, clogged drains, piling of waste material and rubbish around construction sites are indicators of corruption.
- Abnormal time-over run (over and above a reasonable figure adopted as audit criteria) accepted and regularized by the management as 'beyond control'.
- Repeated extensions are given to the contractors.

¹⁷ Rose-Ackerman has reported an interesting case. "In Nigeria in 1975, the military government ordered cement that totaled two-thirds of the estimated needs of all of Africa and which exceeded the productive capacity of Western Europe and the Soviet Union. The price exceeded the international market price by a wide margin, presumably to make room for kickbacks, and freight companies collected compensation for having to wait in the clogged Lagos harbor. The cost to Nigeria was \$ 2 billion or one-fourth of 1975 oil revenues." [*Corruption and Government: Causes, Consequences, and Reform*], Cambridge: Cambridge University Press, 1999, pp.30-31].

- Repeated change orders are issued leading to changes in the scope of work and prices to be paid or changes made in the quality of the goods and services to be delivered.
- Repeated transfers of the project staff are made to ensure complete absence of institutional memory or continuity of oversight within the organization.
- Liquidated damages clause in the contract defined in such a manner that it does not have a bite¹⁸.
- An over-load of controls, or existence of complicated procedures leading to delay in delivery of service and inducing the clients to offer bribes.
- Absence of any service delivery benchmarks and excessive time taken for issuing licenses and permits, encouraging payment of speed money.

Corruption Indicated by Lack of Effectiveness

- Well-articulated, measurable or quantified performance indicators do not exist.
- Actual internal rate of return (IRR) is significantly lower than anticipated.
- A survey of clients' perceptions reveals a high level of dissatisfaction with the delivery of services. Outputs and services are not delivered as planned or quality is seriously undermined.
- There are barriers to reach the senior management for protesting against poor quality of service and there is no other complaint handling mechanism to address the complaints of the unsatisfied users of services.

Preventive Role of Performance Auditing

The performance auditing can help minimize corruption by creating deterrent. Following could be a good practice:

- (a) The top management or governing body should encourage performance auditing over routine compliance auditing.
- (b) The top management should inform all program managers that their performance would be audited. All programs and projects should be subjected to performance audit periodically.
- (c) The top management should support the performance auditors in developing mutually acceptable performance audit criteria and all managers should be aware of the criteria.
- (d) The top management should also prescribe in detail the mechanism for accumulating data and other information on performance of the program at the levels of individual manager, unit or section. The performance auditors should take

¹⁸ In one interesting example, the present writer noticed that a project of \$135 million, which had taken three times the original time, had a liquidated damages clause which, if implemented, would penalize the contractor by about \$5000 only.

these data as assertions of the management about their performance and verify these assertions during their audit work.

(e) The top management should invite the performance auditors to hold short workshops and orientation sessions for the program managers and sectional heads on performance auditing.

(f) The management should adopt a policy of widely circulating the results of performance auditing, giving credit to those whose performance have been up to the mark in the light of the criteria adopted. This would encourage the managers to adopt the culture of performance auditing.

(g) It should be part of standard management policy to undertake independent investigations where the results of performance audit indicate a possibility of corruption.

(h) The performance audit recommendations agreed to by the program managers should be implemented in all earnest.

D. Strengthening Supreme Audit Institutions (SAIs)

Fighting corruption requires a multi-pronged attack. It requires reforms, *inter alia*, in public administration, judiciary, public information, and cultural values of the society. The individual auditor or even an internal audit department of a government or public sector organization cannot propose actions beyond what cannot be implemented by their respective auditees. There are actions which have to be taken by the government or which require political will of the state. For such actions, only an institution like SAI can take the initiative. For this purpose, the SAI itself needs to be strong and well-resourced. The present part of the paper endeavors to suggest a mechanism to strengthen the SAI and the action that the SAI can take in turn to prevent or minimize corruption. The action on this score is important because until the SAI is strong enough and is able to play the leadership role, the individual auditors or even lower level audit departments cannot make much of a difference in the fight against corruption.

Although there is a general agreement that the SAI should play an effective role in promoting transparency, governance and accountability, yet most of the SAIs in the developing world still lack adequate independence and resources to play this role.

Current State of the SAIs

The International Organization of Supreme Audit Institutions (INTOSAI) adopted The *Lima Declaration of Guidelines on Auditing Percepts* at its Ninth International Conference in Peru in 1977. The declaration sets out the international standards for the SAIs, such as independence, powers, scope, and relationship with the executive and legislative branches. However, in 2001, after about a quarter of century, an INTOSAI survey of the SAIs independence by its Task Force revealed that a large number of SAIs still did not have a desired level of independence. For example, the Task force reported:

- SAIs of 73 countries felt that there was significant room for improvement in financial autonomy.

- SAIs of 63 countries felt that there was significant room for improvement in their managerial and administrative autonomy.
- SAIs of 42 countries felt there was significant room for improvement in their constitutional autonomy.
- SAI of 33 countries felt that there was significant room for improvement in their freedom to report findings.¹⁹

The International Budget Project (IBP), a non-profit organization that works with organizations around the world to assess impact of budgets on the poor, conducted a survey of 36 countries (drawn largely from Africa, Eastern Europe, Asia, and Latin America) to assess transparency in national budgetary processes.²⁰ The survey showed that out of the 36 countries surveyed:

- In 12 countries, citizens did not have access to the auditors' reports *even though the reports were produced in 11 of these countries*. (Emphasis in original).
- Only 6 countries produced its attestation report within six months of the year-end.
- In 15 countries the final audited accounts of the national departments are either not completed within two years after the end of fiscal year or are not released to the public
- In 8 countries, the final audit accounts are released more than a year after the fiscal year closes.
- In 19 countries, the SAI either does not release to the public reports of audits of extra-budgetary funds or it does not audit such funds.
- In 23 countries neither the SAI nor the legislature releases to the public a report that tracks action taken by the executive on audit recommendations.

Recommendations for Strengthening the SAIs

In view of the situation actually prevailing in a large number of SAIs, the present paper recommends several actions for strengthening the SAIs. The following recommendations deal with, mostly, strengthening the SAI so that it can play its role in the fight against corruption effectively.

Independence of SAI

(a) The government should enforce a law that guarantees independence of the head of the SAI, allows wide publication of its reports and ensures implementation of its recommendation. Of significance is the independence of the SAI from the ministry of finance and ministry of establishment, responsible for hiring and firing of staff and creation of posts in the government. The SAI should also be

¹⁹ Independence of SAI Project; Final Task Force Report, INTOSAI, March 2001. [Http://www.intosai.org](http://www.intosai.org)

²⁰ Ramkumar, V. & Krafchik, W. *The Role of Civil Society Organizations in Auditing and Public Finance Management*, n.d., 26 pp. www.cbpp.org

independent to decide what to audit and how to audit. The head of SAI should have a secure tenure with requirements for accountability and performance assessment by the parliament or some such body to safeguard against abuse of power and corruption.

(b) The audit law should allow or even require the SAI to report separately or at least distinctly, on opportunities of corruption that it noticed during its audit examination

Powers of the SAI

(c) The SAI should have the power to audit the accounts of individual tax payers, where an audit of tax administration suggests a possible collusion between the tax payer and the tax staff. The SAI should have the power to audit those organizations which get some grant or subsidy from the government. In case of large public works, the SAI should have the right to audit the payments received by the contractors from the government.

(d) The law should provide the SAI with power to have access to all records in a timely manner, power to interview government employees and other relevant persons, and duty of all public sector organizations and their staff to cooperate with the SAI. The law should provide sanctions against those staffs and organizations that fail to comply with the requirement or willfully delay the provision of information to the SAI.

(e) The SAI should have the authority to engage experts or consultants, should the technical nature of a department or agency so require.

(f) The scope of SAI's work should be comprehensive and the parliament should ensure its coverage to all such organizations where public funds are involved. One of the avenues of corruption is that some departments resist audit by the SAI on the plea that the information being handled by them is of sensitive nature and cannot be made public. Such departments are often prone to corruption. The mandate of the SAI should cover audit of such departments as well. However, special safeguards can be provided against leakage of information. For example, it can be provided that auditors below a certain level are not entrusted this type of work or the audit report is submitted to a very senior level only or the auditors of such assignments are first cleared by security agencies, etc.

(g) The audit law should also make it obligatory for the non-governmental organizations receiving grant from the government to maintain their accounts in a transparent manner and such accounts should be within the power to the SAI to audit to the extent of funding by the government.

Participatory Auditing

(h) The SAI should develop a mechanism to engage the general public while planning its annual work. One possibility could be to provide a link on the SAI web-site inviting general public to indicate areas requiring SAI's attention. This

information could be called for in a structured manner. It would be real breakthrough in democratizing the SAIs²¹.

(i) The SAI's website should have an e-mail address and a form for communication with the office relating to corruption and fraud. People in general should be widely informed through media about this facility. The SAI should have a system of receiving information on possible avenues of corruption and develop suitable recommendations to get the corrupt systems replaced by honest systems.

(j) The SAI should plead with the government that in planning for development projects for the welfare of the people, especially, in areas of education, health, water supply, sanitation, etc the local population should be involved in the project design. The needs of the local people should be reflected in deciding the location, size and service delivery management. Similarly, local committees can be formed to monitor the project execution and project performance.

Implementation of Audit Recommendations

(k) The SAI should try to create, with the help of government, an institutional mechanism to feed the results of audit in future economic planning. It means, before a development project or program is finally approved, there should be a system of clearance from an independent body that the current project or program plan does not commit the same mistakes which the past audit reports had pointed out. Unfortunately, this important step in the cycle of good governance is badly missing in most of the developing countries. The auditors keep on reporting same or similar irregularities or examples of mismanagement and embezzlement year after year and the executive hardly takes note of that. Future projects and programs commit the same mistakes. It is far more effective and economical to prevent the mistakes (intentional as well as unintentional) than to detect them and take corrective action.

Review of Procedures and Training of Auditors

(l) The SAI should play a leading role in persuading the government to set up an independent standing commission responsible for reviewing various law, rules, regulations and procedures in the entire government with a view to determining their adequacy for preventing corruption. The commission should work on a continuous basis to cover all public sector ministries, departments and agencies over a cycle of, say, three years. The objective of the commission should be to develop alternatives procedures and regulations, in consultation with the concerned organizations, for minimizing opportunities of corruption.

²¹ It is interesting to note the Korean SAI, BAI, has introduced a system of "Citizen Audit Request System" since July 2001, whereby if an audit is requested by 300 or more persons and if it meets certain requirements, the BAI conducts the audit and reports back the results to citizens who requested the audit. See Pyun, Ho Bum, *Audit and Civil Society*, 2005, pp.7. Paper presented to the 6th Global Forum on Reinventing Government towards Participatory and Transparent Governance, 24-27 May 2005, Seoul, Republic of Korea. [www.unpan.org.]

(m) The SAI should set up a core group in its office, which should review and analyze government-wide rules, regulations and laws with a view to indicating areas that provide opportunities for corruption. The objective of this group should be to develop standard audit criteria for corruption auditing in various departments and agencies. The group should also prepare master trainers to train other auditors in corruption auditing. The group should work closely with the above mentioned commission and provide necessary input from the SAI's point of view. The group should work for developing necessary proposals to be taken up with the government for changes in the systems and procedures.

(n) The SAI should obtain in its budget resources for the training of its own staff as well for training the staff of the executive departments and agencies in creating awareness about corruption and preparing them to combat corruption.

Code of Ethics

(o) The SAI should, first of all, be seen above reproach. It should develop its own code of ethics. The code should not be a mere piece of paper. The head of the SAI should put in place a monitoring system to ensure that the auditors observe the code of ethics in letter and spirit.

(p) The SAI should also persuade the government to develop and enforce code of ethics for all government employees.

Performance of the SAI

(q) The SAI should develop a comprehensive cost accounting system for its own office. All audits should accrue time and money spent on it. This will set an example for other organizations, indicating that the SAI has the highest standards of economy, efficiency and effectiveness. The budget of the SAI should be in terms of money as well as person-days. The annual evaluation of the office should disclose the extent to which various targets were achieved within the allocated budget.

(r) The SAI should be an office with highest degree of transparency and accountability. A firm of chartered accountants should audit accounts of the SAI. The SAI should offer its own organization for evaluation in the broader scope of performance auditing by an independent firm of accountants. The SAI should provide access to the basis of various decisions taken during the year.

Cooperation and Coordination

(s) The SAI should develop a networking relationship with other enforcement agencies for sharing information and training of personnel on a reciprocal basis.

(t) Fighting corruption requires cooperation and commitment at all levels, from global to local, and by government and non-governmental organizations. The SAI should make concerted efforts to be part of the global network engaged in fighting corruption.

(u) The SAI, public authorities, civil society, and the private sector should join hands in the fight against corruption through sharing of information and active coordination for division of labor. There should be open and frank discussion within these organizations about opportunities for corruption and about methods for minimizing it.

(v) The SAIs of different countries should sign Memorandums of Understanding to cooperate with one another in promoting and developing measure to prevent and fight against corruption through international programs and projects, including sharing training facilities on corruption auditing.

Preparing the Auditors for Fight against Corruption

Auditing against corruption is a specialized field and not much has been done by the profession to develop the skills of the auditors. It would require concerted efforts by the international community to build capacity among the auditors for fighting corruption through incisive auditing. It would require development of an appropriate training

material on corruption auditing. The training program for auditors should contain, besides refresher course on general auditing techniques, such subjects as stated below:

- (a) Effective measures to prevent, detect, investigate, punish, and control corruption, including the use of evidence-gathering and investigative methods
- (b) Building capacity in the development and planning of strategic anti-corruption policy
- (c) A broad understanding of the operations of such public functions as procurement, land revenue, income tax, customs, police, public works, utilities, etc, where corruption is rampant
- (d) An understanding of the fund transfer mechanism and money laundering techniques used by corrupt persons
- (e) Understanding of the laws relating to whistle-blowing, protection of witnesses, experts and victims, if any, in the country
- (f) Audit criteria on corruption auditing for different departments and functions

Exposing the auditors to this type of training could be expected to equip them with some tools for auditing against corruption, as it would enhance their understanding of the corrupt practices and the way they flourish and get protected.

It would be preferable if professional bodies of auditors join hands in developing a generic set of core material on corruption auditing to be used globally, leaving the country-specific material to be developed by each country itself.

It would also be desirable that the INTOSAI and its regional affiliated bodies organize seminars and conferences on corruption auditing, creating awareness and imparting skills among auditors against this menace. The developed countries can volunteer to provide technical and financial assistance to developing countries for training the auditors in this field.

E. Concluding Remarks

Corruption auditing is yet a new concept. As compared to fraud auditing, which has now a well-developed tool-kit, corruption auditing practice poses a greater challenge as the auditors are supposed to venture into an area in which no documented evidence is available. The auditors cannot play a role in *detecting* corruption. However, they can help in *preventing* corruption by pointing out areas where opportunities for corruption exist. The paper introduces the methodology of corruption auditing, using the normal auditing practice. However it pleads some innovative approaches in the following areas:

- (a) The auditors will need to come out of the cocoon of 'internal documentary evidence'. They would need to collect information from outside sources such as users of a public facility, client organizations, or even general public. A distinctive feature of the methodology for corruption audit is surveys of general public as well as surveys of the users of a service. In compliance auditing, for

example, surveys are a rare exercise. However, in corruption auditing, this would be one of the primary techniques.

- (b) The SAIs should have power to audit the accounts of individual tax payers if there is a reasonable basis to believe that corruption has taken place due to collusion of tax employees with the individual tax payer, causing significant losses to the public exchequer.
- (c) The governments should consider setting up standing commissions for reviewing all operational procedures, rules and regulations and even laws with a view to modifying these procedures and rules to minimize opportunities for corruption. The SAIs needs to work with this commission as a close partner.
- (d) The SAIs should open their doors to public interaction. They should devise some mechanism to involve general public or concerned citizens in planning the audit work. The focus should be on inviting suggestions about the audit of those areas which the people think have greater opportunities for corruption.
- (e) The SAIs should publish the audit reports in easy-to-understand language for the general public and disseminate them widely. It would encourage general public to take interest in the affairs of the state and demand accountability from the executive government.
- (f) There has been a lot of lip-service to the implementation of audit recommendations. However, there is no institutional arrangement in the developing world that ensures that the future development plans take into account past audit recommendations. This needs to be done in the interest of economy, efficiency and effectiveness of SAIs and to plug in unethical holes in governance.
- (g) The international community should join hands in developing training material on corruption auditing and in training the master trainers in developing countries. They should provide financial and technical help to the developing countries for strengthening of the SAIs.

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PART C

Integrity, Transparency and Accountability in the Public Sector: Rebuilding Public Trust

*Designing and Enforcing Codes of Conduct**

Trust in the public sector is crucial to any society for successful economic growth and delivery of essential public goods and services that, nowadays, require the formation of successful partnerships between government, business and civil society. However, there has been a steady decline in trust in government, largely due to the inadequacy of governance systems to meet rising expectations on the part of the citizens. Governments need to systematically meet the challenge of reversing this trend through concrete measures for rebuilding public trust in various governance institutions.

A code of conduct, through creating a framework for outlining the professional duties and rights of public officials, is an important instrument to promote public trust through requiring integrity, transparency and accountability in the public sector. But how can codes be designed and enforced for sustained effectiveness?

This policy brief of questions and answers (Q&As) on codes of conduct is based on the experience of 20 Central and Eastern European countries that were represented at an Expert Group Meeting. The experts gathered to consider the preventive provisions of the UN Convention against Corruption, including codes of conduct, in preventing corruption, contributing towards re-building trust in government. This policy Q&As address the essential aspects of designing and enforcing an effective code of conduct for public officials.

*Prepared by Ms. Elia Armstrong

Why should there be a code of conduct for public officials?²²

- ◆ Public officials have a duty to uphold public interest and should publicly state their commitment to it.
- ◆ A code of conduct delineates professional boundaries of behaviour for public officials.
- ◆ Public officials should be honest, lawful, independent, impartial, fair, and competent, observe due process and economize public resources.
- ◆ Public officials need to know what constitutes desirable, questionable and unacceptable professional conduct.
- ◆ A code of conduct serves as a basis for professional identity and pride for public officials. It is a source of both cognitive and emotive value for those covered.
- ◆ It is the basis for holding public officials accountable and for their management to take appropriate action when its standards are not observed.
- ◆ A code of conduct communicates to the public the behavioural standards to be expected from public officials. The public can complain and expect appropriate action when those standards are not observed.
- ◆ It promotes public trust through requiring predictability and reliability – or professionalism – on the part of the public official.

What is a code of conduct?

- ◆ A code of conduct is a foundational document that provides the framework for public officials in carrying out their duties.
- ◆ It is a “living” document and should be updated regularly to reflect changing circumstances. A process for periodic review or evaluation and revision should be built into the programme of implementation.
- ◆ A code of conduct is not necessarily the same as legal rules. It can have a legislative or an administrative basis and be applied to be consistent with constitutional conventions and administrative practices.
- ◆ It is a tool to guide public officials in making difficult decisions when they may be tempted away from or confused in upholding the public interest, through identifying:
 - core values: aspirations or desired moral states,
 - principles: general rules that guides behaviours or decisions, and

²² For a definition of a “code of conduct” for the purposes of this discussion, see section below on *Should the guidance to public officials be a “code of ethics” or a “code of conduct”?*

- standards: prohibitions or restrictions and exceptions to them.
- ◆ It can be a deterrent to those contemplating acting in private interests or unjustified disregard of rules by ensuring that others are aware of ethical standards and by listing sanctions for such acts.
- ◆ It can also assist public officials in making ethical behaviour habitual, thus safeguarding the integrity of the public service.

Who should be covered?

- ◆ A code of conduct can hold general aspirations for all public officials, such as a public service code or charter, or specific standards customized for particular strata, such as a leadership code for ministers or senior executives.
- ◆ It can be a uniform national code designed to assure the same standards or a department -specific code to be more responsive to particular situations and risks, faced by differing mandates and functions. Sometimes, a general government-wide code is supplemented by specific department or agency codes. In such cases, the latter can set higher but not lower standards than the former.
- ◆ Different codes or standards may apply to public officials of differing contractual status. For example, more stringent standards may apply to permanent employees than to temporary, part-time or contractual employees.
- ◆ Different codes of conduct can exist for sub-national and local governments.
- ◆ A separate code can exist for different branches of government: legislative, executive, judiciary.
- ◆ The various codes of conduct can cover elected and appointed officials, civil servants, members of the judiciary, public enterprises, consultants and contractors.
- ◆ In addition to public sector codes of conduct, public officials may also be covered by professional codes of conduct if they are also members of established professions such as medicine, law, accounting, social work, etc.
- ◆ The standards in public sector codes are most effectively enforced if there are complementary standards in private and not-for-profit sector codes. For instance, if private or not-for-profit sector codes take into account the gift and hospitality limits for public officials, the latter are easier to enforce. Such limits are better observed if both the demand and supply side abide by them.

Should the guidance to public officials be a “code of ethics” or a “code of conduct”?²³

²³ For ease of reference, both types of documents are referred to simply as a “code of conduct” in this document.

- ◆ A “code of ethics” is usually a short statement of values and broad principles that provides overall guidance to public officials. A “code of conduct” is a longer list of clear limits and prohibitions on certain types of behaviours in particular situations to be observed by public officials.
- ◆ A code of ethics is values-based or aspirational. In this sense, public servants and their managers are encouraged to agree upon the boundaries rather than specifics of expected behaviour, with the understanding that they will aim for the highest standards. Codes of ethics cover all situations and are easier to remember but difficult to enforce. They are well-suited to organizations with a well-established professional ethos and a homogeneous administrative culture.
- ◆ A code of conduct is compliance-based or disciplinary. In this sense, public servants are informed of minimum standards that must be observed, with clearly identified consequences for not doing so. Codes of conduct cannot anticipate all situations and tend to be long and difficult to remember but are easy to enforce. They are more appropriate for organizations with diverse professional identities and a heterogeneous administrative culture.
- ◆ In reality, most codes are a mix of the two approaches, though not necessarily in equal parts.
- ◆ The overall approach to a code may depend on the general administrative basis of a country: convention/practice or codification. Legal frameworks based on common law may result in codes of ethics while those on Napoleonic codes may end up with codes of conduct.
- ◆ The success of codes also depends on the approach to administration. New public management with an emphasis on outcomes rather than processes may favour the more flexible codes of ethics. Traditional public administration based on the Weberian model of bureaucracies may favour the clearly defined codes of conduct.
- ◆ Within a given jurisdiction, a development or transition from one approach to the other may take place, sometimes over a long period of time. For instance, a newly formed organization may initially rely on clearly-defined limits and prohibitions, but as the professional ethos of its employees becomes well-established, it may migrate to relying more on a shared vision of values and aspirations.

What should be covered?

- ◆ A code of conduct should inculcate a vision of what behaviours to encourage and those to discourage. It should seek to incorporate behavioural, organizational and political objectives when it is being articulated.
- ◆ On the aspirational side, it should outline the values and principles underlying public office. It should further list the duties and responsibilities as well as the rights of public officials that flow from these values and principles.
- ◆ On the disciplinary side, the code should list standards and limits that apply to public officials in the discharge of their duties at the individual level, their relationships within the administration and relationships with the public.
- ◆ At the individual level, standards for identifying and managing conflicts of interest situations should be stated. A conflict of interest is when a public official's private interests interfere with the performance of his or her official duties. A conflict of interest can be:
 - *actual*: private interests interfering with official responsibilities,
 - *apparent*: people may reasonably think that private interests are interfering with official responsibilities, or
 - *potential*: private interests may later interfere with official responsibilities.
- ◆ A conflict of interest can occur in:
 - financial interests in holding assets or making investments;
 - receiving gifts, hospitality and outside benefits;
 - undertaking outside employment and activities;
 - running for public office and other political activities;
 - making public pronouncements;
 - using official resources;
 - divulging confidential information obtained in public office;
 - representing private clients before government;
 - undertaking public procurement and contracting; and
 - seeking or undertaking other employment after public office.
- ◆ In relationships with other public officials or members of the public, public officials must refrain from abusing their office by:
 - soliciting bribes, gratuities or other favours for carrying out or refraining from official functions;
 - indulging in physical, psychological or sexual harassment;
 - favouring family relations and friends and overlooking merit in selection processes and making other administrative decisions; and
 - discriminating based on gender, ethnic, religious or other biases.
- ◆ A code of conduct for public officials usually covers the ethics of public administration or management rather than of public policy decisions or objectives. If a code covers too much, it will lose its effectiveness.
- ◆ Whatever the scope of a code of conduct, it must be technically sufficient to withstand legal and administrative challenges yet simple and clear to the average public official. Its tone and scope depends on its intended purpose and audience.

When and how should stakeholders be involved in designing and applying a code of conduct?

- ◆ Ideally, in designing a code of conduct, the views of all stakeholders should be considered, wherever possible: public officials, client groups, business groups, and civil society organizations. Consulting and involving key stakeholders in various combinations and stages of the design process will not only ensure buy-in but also allow for a comprehensive assessment of integrity risks. Simply drafting a document and posting it without proper consultation may create more cynicism about the code's usefulness.
- ◆ Consultations can utilize employee surveys, stakeholder surveys, focus groups and structured interviews.
- ◆ Participation in drafting the text of a code can be top-down, through comments on a draft, or bottom-up, consultation on the identification of key issues.
- ◆ Once drafted, ethics education and training for those covered are very helpful in applying a code. Ethics education focuses on explaining core values and broad principles that can assist public officials to recognize ethical dilemmas or conflicts of interests. Ethics training is geared to familiarizing public officials with specific rules and standards that pertain in their organization to ethical dilemmas and conflicts of interests. Both ethics education and training approaches should be combined to teach practical skills for ethical decision-making. In order for ethics education and training to be useful,
 - adequate resources should be allocated and invested;
 - training sessions should be held at critical junctures of a public official's career such as upon entry, lateral move or promotion and separation;
 - individual mentoring and coaching as well as group training methods can be applied;
 - an appropriate mix of general and customized content must be considered for different functional groups of public officials (for those public servants in high risk activities such as handling cash, allocating funds, procurement, regulatory activities and inspection, recruitment and selection, oversight, etc.);
 - different modalities such as classroom, interactive computer-based or on-line training should be explored; and
 - an institution, a line department itself or a training institute, should be designated and held responsible.
- ◆ In addition to regular ethics education and training, real-time ethics advice should be provided to interpret the "grey areas" of a code.
- ◆ In applying and enforcing a code for public officials, NGOs, the media and members of the public can serve as allies. For example, they can be motivated and helpful in verifying financial assets and other declarations of interests, if such declarations are public.

- ◆ However, it is important to avoid selective application of the code for political reasons or pressures.
- ◆ Fairly applied codes of conduct are important to building public trust. Therefore, it is important to publicize the code.

<p>What incentives should be used to enforce a code of conduct?</p>

- ◆ Conditions of employment such as adequate remuneration and the existence of a meaningful career progression should be in place for public officials to value their employment and avoid temptations.
- ◆ The provisions of a code of conduct should be built into recruitment and selection processes as well as performance evaluation.
- ◆ The observance of the code can be highlighted as a condition of employment by being included in individual employment contracts or collective agreements. In the case of the latter, trade unions can regulate the behaviour of their members.
- ◆ Public officials at all levels should be sensitized to the fact that their behaviour can be a reputational risk for their employing organizations.
- ◆ Heads of department and lower level managers can be held accountable for implementing and enforcing the code.
- ◆ Recognition, monetary or nominal, can be given to managers for creating ethical environments and for staff for outstanding acts of integrity.
- ◆ Ethics education and training can be incentive-based or mandatory. To make both training and enforcement more effective, they may be handled by different administrative units.
- ◆ Clear feedback, positive or negative, or complaints procedures and receiving units should be set up for those within and outside of the organization for “blowing the whistle” on or reporting on violations of the code of conduct.
- ◆ Measures should be in place to protect those who report violations of the code of conduct in good faith. Investigations should be professional and confidential.
- ◆ Administrative and criminal sanctions commensurate with violations should be established, communicated and applied. Administrative sanctions require lower standards of proof than criminal sanctions so are more easily applied.
- ◆ Ethics or disciplinary committees or administrative judges can be employed to review complaints and disciplinary cases. They should be given adequate mandate and resources to effectively carry out disciplinary procedures.
- ◆ Institutions involved in investigation and sanctions should be clearly identified and coordinated. Overlapping jurisdictions create shopping around for desired solutions. Sanctions should be carried out in a timely fashion.
- ◆ Confidentiality of disciplinary sanctions and reporting may depend on the seriousness of integrity problems in the organization.

What actions are needed to make a code of conduct workable for the long term?

- ◆ Ultimately, the success of a code of conduct depends on creating an organizational culture of valuing integrity.
- ◆ Ethical leadership, through good modeling and constant references to the importance of integrity, is a good starting point for building such a culture. The leadership should also be effective and independent in enforcing the codes.
- ◆ Codes of conduct also require institutional support, through a designated agency as its “guardian.” The agency must consistently apply the code in a fair manner, balancing confrontation with conciliation.
- ◆ The standards in a code need to be backed up by administrative procedures, where necessary. For example, procedures for administering and reviewing interest declarations (whether confidential or public), gift registries, procedures to vet and authorize outside activities need to be put in place to make it easier for public officials to observe the code.
- ◆ The public’s and public officials’ expectations about the code should be managed. A code by itself cannot be a panacea for all problems.
- ◆ Any legal and institutional reforms should be aligned with the code.

About these Policy Q&As ... (URL of EGM)

These Policy Q&As are mainly based on the main findings of the Working Group on *Designing and Enforcing Codes of Conduct* of the Expert Group Meeting on *Ethics, Integrity and Accountability in the Public Sector: Re-building Trust in Government through Implementation of the UN Convention Against Corruption*. This meeting -- organized by the UN Department of Economic and Social Affairs (DESA), UN Office of Drugs and Crime (ODC), the Inter-Parliamentary Assembly of the CIS (IPA-CIS) and the Network of Institutes and Schools of Public Administration of Central and Eastern Europe (NISPACEE) -- was held 26-27 September 2006 at St. Petersburg, the Russian Federation.

Around 30 experts from 20 Central and Eastern European countries discussed how the preventive provisions of Chapter II of the UN Convention against Corruption can contribute to preventing corruption, thus re-building trust in government. They formed working groups on three aspects:

- Designing and enforcing codes of conduct,
- Building an effective anti-corruption commission or better coordinating existing relevant offices, and
- Financial and public property management for preventing and fighting corruption.

The experts agreed that the UN can play a valuable role through disseminating good practices and guidelines, training and building a network of middle-level managers, and supporting research into corruption risks.

About Good Governance and Public Administration at the UN ... www.unpan.org

The mission of the Division for Public Administration and Development Management of the UN DESA is *to assist Member States in ensuring that their governance systems, administrative and financial institutions, human resources and policy development processes function in an effective and participatory manner by fostering dialogue, promoting and sharing information and knowledge, and providing technical and advisory services*. The work of this Division is guided by the UN Committee of Experts on Public Administration and Development.

ANNEX 1**LIST OF PAPERS AND PRESENTATIONS**

1. Guido Bertucci - Opening Statement - Ethics, Integrity and Accountability in the Public Sector: Re-building Trust in Government
2. Bernard Leroy - Implementing the UN Convention against Corruption: How To Go Ahead
3. Allan Rosenbaum - Implementing the UN Convention against Corruption in Developed Countries: Some Insights Drawn from the Case of the United States
4. Natalia Kolisnichenko - Natalia Kolisnichenko - Corruption in Developing Countries: Some Insights Drawn from the Ukrainian Experience
5. Ryan Wong - Independent Commission against Corruption
6. Drago Kos - Building an Effective Anti-Corruption Commission
7. Elia Armstrong - Integrity, Transparency and Accountability in the Public Sector: Rebuilding Public Trust - Designing and Enforcing Codes of Conduct
8. Etienne Maritz - Designing and Enforcing Codes of Conduct for Public Officials
9. Alexejas Loskutovs - Ethics, Integrity and Accountability in Public Sector: Practice and Lessons Learned in Latvia
10. Muhammad Akram Khan – Role of Audit in Fighting Corruption
11. Jorge Hage Sobrinho - Implementation of the UN Convention against Corruption: Innovation Measures
12. Milton G. Tumubegyereze – Effective, Transparent and Accountable System of Public Procurement: The Uganda Perspective
13. Pan Su Kim – Implementing the UN Convention against Corruption: Challenges and Perspectives from Asian Countries.

ANNEX 2 – AGENDA



Division for Public Administration and Development Management (DPADM)
United Nations Department of Economic and Social Affairs (UNDESA)



UNITED NATIONS
Office on Drugs and Crime



UNITED NATIONS DEVELOPMENT PROGRAMME

**Ethics, Integrity, and Accountability in the Public Sector:
RE-BUILDING TRUST IN GOVERNMENT
Through
Implementation of the United Nations Convention against Corruption**

AD HOC EXPERT GROUP MEETING
St. Petersburg, Russia 26-27 September 2006

Ethics, Integrity, and Accountability in the Public Sector: Re-building Trust in Government through Implementation of the United Nations Convention against Corruption, (Tavrisheskiy Palace, St. Petersburg, 26-27 September 2006)

Tentative Programme

DAY 1: Tuesday, 26 September 2006

08.00 – 09.00 Registration

09.00 – 09.30 Opening session

Opening Remarks

- IPACIS
- NISPAcee
- Guido Bertucci, Director, Division of Public Administration and Development Management, United Nations Department of Economic and Social Affairs (DPADM/UNDESA)

Session 1: 9.30 – 12.00

Chairman – Mr. Guido Bertucci, DPADM/UNDESA

Presentation 1: Implementing the United Nations Convention against Corruption:

Mr. Bernard Leroy, Senior Advisor, United Nations Office on Drugs and Crime

A number of countries, both developed and developing, have ratified the United Nations Convention against Corruption. The ratification demonstrates at least the will of the leadership of these countries to engage in the difficult task of fighting corruption. However, for many of these countries and even for those who have not yet ratified the convention, the question that is difficult to answer is how to go ahead and effectively implement the convention to stamp out corruption which in many countries has been causing difficulties in governance and socio-economic development. Implementing the Convention poses challenges related to human and institutional capacities as well as challenges linked to social attitude and even resources. Issues of policy, strategies, institutional set up, human resources capacities, societal outlook towards corruption, and resources to support the fight against corruption are embedded in all the challenges. The presentation and discussion on “Implementing the United Nations Convention against Corruption” will explore the various challenges and provide hints on how they can be overcome. In this way the presentation will serve as the opening chapter of the discussions that will take place through the two days of the meeting.

Discussant 1: Ethics, integrity accountability and the fight against Corruption in Latin America: challenges and perspectives of implementing the UN Convention

Mr. Jorge Hage Sobrinho, Minister of State and Head of the Office of The Comptroller-General of Brazil

Discussant 2: Implementing the UN Convention against Corruption in Developed Countries

Mr. Allan Rosenbaum, Professor, Florida International University, USA

Discussant 3: Implementing the UN Convention against Corruption: Challenges and perspectives from Asian countries

Mr. Ryan Wang, Deputy Commissioner, Independent Commission against Corruption, Hong Kong

Discussant 4: Ethics, integrity accountability and the fight against Corruption in Central and Eastern Europe and CIS countries: challenges and perspectives of implementing the UN Convention

Mr. Drago Kos, Chairman of the Commission for the Prevention Corruption, Republic of Slovenia

Discussant 5: Ethics, integrity accountability and the fight against Corruption in Africa: challenges and perspectives of implementing the UN convention

Mr. Kamazima, Director General, Prevention of Corruption Bureau, Tanzania

10.45 – 11.00 Coffee Break

11.00-12.00 Plenary discussion

Session 2: 12.00 - 17.30

Chairman – Mr. Shabbir Cheema, Principal Adviser and Programme Director, DPADM/UNDESA

Presentation 2: Public Sector Institutional Instruments for preventing and fighting corruption

Ms. Elia Yi Armstrong, Ethics Officer (Interim), Ethics office, UN Secretariat

Preventing and fighting corruption is not a once and off exercise. Therefore the implementation of the UN Convention against Corruption will have to be done through building institutional capacities that can sustain the prevention of and fight against corruption both in the Public and the private sectors. For some counties such institutional capacities are available, for others they are available but insufficient. But in many countries, these capacities are largely lacking and need to build and sustained. A number of presentations and the discussions under this topic will highlight, the cases of institutional set up that have proved successful in preventing and fighting corruption. They will also provide hints on how specific situations can be analyzed and appropriate institutions set up and operated to prevent and fight corruption in line with the UN Convention against Corruption.

Discussant 1: Structural, Functional, and Behavioral Attributes of a Successful Preventive Anti-Corruption Body: Elements of a Preventive Anti-Corruption Model for the Public Service

Mr. Aleksejs Loskutovs, Director of Corruption Prevention and Combating Bureau, Latvia

Discussant 2: Designing and Enforcing Codes of Conduct for Public Officials:

Mr. Etienne Martiz, Office of the Prime Minister, Namibia

Discussant 3: Building an effective Anti-Corruption Commission

Mr. Drago Kos, Chairman, Commission for the Prevention of Corruption, Slovenia

13.15 - 14. 45PM: Lunch

14.45 – 15.45 PM Plenary Discussion

Session 2 (Continued): 15.45 -17.30

Public Sector Institutional Instruments for preventing and fighting corruption

Discussant 4: Effective, Transparent, and Accountable System of Public Procurement

Mr. Milton Tumutegereize, Public Procurement and Disposal of Public Assets Authority, Uganda

Plenary Discussion

DAY 2: Wednesday, 27 September 2006

9:00- 10:30 Working in Groups

1. Working Group on “Designing and Enforcing Codes of Conduct for Public Officials”

Mr. Mr. Shabbir Cheema, DPADM/UNDESA – Moderator
Ms. Elia Yi Armstrong, UN Ethics Office – Resource Person
2. Working Group on “Building an Effective Anti-Corruption Commission or Better Coordinating Existing Relevant Offices”

Ms. Ludmila Gajdosova, Executive Director of NISPAcee
Ms. Natalya Kolisnichenko, Professor, National Academy of Public Administration, Ukraine – Resource Person
3. Working Group on “Financial and Public Property Management for Preventing and Fighting Corruption”

Mr. Alexei, Tikhomirov, DPADM/UNDESA – Moderator
 Mr. Ladislav Zelinka, Professor, University of Economics, Czech Republic –
 Resource Person

- 10:30 – 11:00** **Coffee break**
- 11:00 – 12:00** **Working in Groups continued**
- 12:00 – 13:00** **Group Reports in Plenary**
- 13:00 – 14:30** **Lunch**
- 14:30 – 16:00** **Plenary discussion based on Group presentations**
 Chairman: Mr. Allan Rosenbaum, Professor, Florida International
 University, USA
- 16:00 – 17:00** **Formulation of recommendations**
- 17:00 – 18:00** **Closing session:**
- Guido Bertucci, Director, Division of Public Administration and Development
 Management, United Nations Department of Economic and Social Affairs
 (DPADM/UNDESA)

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ANNEX 3

Experts Group Meeting on
Ethics, Integrity and Accountability in the Public Sector
RE-BUILDING TRUST IN GOVERNMENT
Through the Implementation of the United Nations
Convention against Corruption

List of Experts

Tavrishesky Palace, St. Petersburg, Russia
26-27 September 2006

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