



USAID
FROM THE AMERICAN PEOPLE

ANTICORRUPTION AGENCIES (ACAs)

OFFICE OF DEMOCRACY AND GOVERNANCE
ANTICORRUPTION PROGRAM BRIEF

JUNE 2006

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INTRODUCTION

Since the 1990s, more than 30 countries have established some form of anticorruption agency (ACA) or commission as a key tactic in their efforts to fight corruption. USAID Missions and other international donors are faced with many questions as they provide advice and assistance to host country governments on their efforts to combat corruption. This program brief is intended to assist DG Officers by outlining the critical questions around the establishment and workings of a host country's ACA. The note also provides substantive input on how the answers to those questions may affect the effectiveness of donor support for an ACA.

Some of the general questions that need to be answered before moving forward with any programming efforts are:

Preconditions and evidence of political will:

- Is there political will in the executive and legislative branches for fighting corruption? Have political parties prioritized corruption as a major platform?
- What is the government's main purpose and motivation behind establishing an ACA?

Legal, institutional, and social environment, and the ACA's characteristics and structure:

- What is the environment in which the ACA will have to function? Is there a robust civil society that can assist the ACA and act as a watchdog in the fight against corruption? Is there an independent, functioning judiciary and rule of law?
- How much authority, and which specific powers, should the ACA have?
- Is the financing of the ACA sufficient and independent enough from the executive and legislative branches to ensure continuation of high level investigations if they occur?
- How big should the agency be? What should be its range of responsibilities?

Measures of success:

- What should citizens expect of such an agency, and how will they know whether it has been successful?
- How will the agency add value? Are ACAs counterproductive in some settings?
- When should donors support an ACA?
- What kind of support should donors provide?
- What other institutions might carry out these functions?

In addressing these questions and offering insights based on best and worst practices, it is the aim of this Program Note to provide DG Officers with the tools to more fully and strategically assess ACAs as an area of potential program support.

DEFINITIONS

All countries have some institutions and procedures that engage in the prevention, detection, or punishment of corruption – from prosecutors to auditors to civil service commissions. **An ACA is defined here as a separate, permanent government agency whose primary function is to provide centralized leadership in core areas of anti-corruption activity.** These areas may include: policy analysis and technical assistance in prevention, public outreach and information, monitoring, investigation, and prosecution.

ACAs around the world most commonly perform six functions:

1. Receiving and responding to complaints;
2. Intelligence gathering, monitoring, and investigation;
3. Prosecutions and administrative orders;
4. Research, analysis, and technical assistance;
5. Ethics policy guidance, compliance review, and scrutiny of asset declarations; and
6. Public information, education and outreach.

How well ACAs actually carry out these tasks – and what impact this has on corrupt activities – depends on many factors. These include: the political mandate of the ACA, the scope of its powers and jurisdiction, its resource base and management, its structural setting and safeguards and external factors such as general governance quality and macroeconomic stability.

ACAs can only take on a limited set of these tasks – and other agencies often handle the same tasks anyway.

An ACA's main contributions should be synergy, coordination, concentrated power and autonomy. Thus, the policy rationale for establishing an ACA would

be that, unlike existing agencies of oversight and enforcement, the ACA:

- Will not itself be tainted by corruption or political intrusion;
- Will resolve coordination problems among multiple agencies; and
- Will centralize all necessary information and intelligence about corruption and assert leadership in the anticorruption effort.

This suggests that the main expected outcome of an ACA should be an overall improvement in the performance of the range of existing anticorruption functions within already established government institutions, not the addition of new activities or use of the ACA to substitute for functions that should be performed by other parts of government.

PURPOSE

WHY DO GOVERNMENTS ESTABLISH ACAS?

There are a variety of reasons why a government might decide to establish an ACA. Article 6 of the United Nations Convention Against Corruption requires¹ that each signatory establish a body (or bodies) dedicated to the prevention of corruption. While a real government commitment to fighting corruption might be the main driver, there are other motives to consider. One reason may be a response to external pressure or a crisis. Particularly in these cases, ACAs may represent an attempt at window dressing on the part of a government lacking real political will to fight corruption. Understanding the underlying motivations is essential for understanding the opportunities for and challenges to an effective ACA. These include:

Proactive deterrence with real political will: In some cases, government is seriously committed to reducing

corruption. This could be the case where the leadership has a strong interest in checking corruption among subordinates, governing coalition partners, and other domestic and external actors (e.g. independent agencies and opposition legislators). It could also be a result of a credibility challenge or some other strong interest in combating corruption (e.g. personal values, a desire to strengthen its hand vis-à-vis political opponents, or economic concerns, such as attracting foreign direct investment or trade). Setting up an ACA with adequate powers, resources and high-level backing can create a credible threat of exposure and punishment to offenders.

Political response to pressure or a crisis: An incumbent regime may face pressures generated by a scandal or by negative public opinion of corruption in government. Domestic pressures might come from opposition parties, social movements, elites such as big business owners, or the military. External pressures may arise from foreign investors, powerful trading partners, the international financial institutions or international donors calling for reform. Frequently, new leadership, having campaigned on an anticorruption platform, feels pressure to make good on campaign promises. Any of these pressures may induce the government to create an ACA to demonstrate its commitment to fighting corruption.

The regime's response will vary directly with the depth of the challenge. If the pressure is coming from marginal actors (e.g., grassroots groups or donor governments without significant leverage), then it might be possible for the regime to do little more than window dressing. For example, it might set up an ACA with few resources and no scope for independent action. On the other hand, if the challenge seriously threatens the regime's hold on power,

the situation may demand a more powerful independent commission.

Window dressing is the more likely response in cases where political leadership has a secure hold on power for the long term (e.g. a dominant party or authoritarian regime), or faces electoral pressure and potential loss of office in the near term. Leaders may want to avoid the possibility that the ACA would take action against them. They may prefer a weak or captive agency that would do their bidding. If there is a possibility of losing the next election, the ruling party might not favor a politically subordinate agency since its political masters might change in the near term. The best insurance would then be a completely toothless ACA.

Witch Hunts: While ACAs are not likely established with this as their stated purpose, once created, they are often manipulated by the ruling party to attack and eliminate members of the opposition or to punish members of their own party who are perceived as having stepped out of line.

Other power dynamics may also be in play. Alternation of parties in power might not equal substantive changes in leadership in cases where the parties are personal vehicles of members who all belong to the same elite. Another power dynamic could be that the executive and the parliament are under the control of different parties. Also, elites themselves may be fragmented. All of these scenarios can influence what kind of ACA a government will propose. **ACAs respond to mixed motivations –it is important to examine what these motivations may mean for the seriousness of reform commitment before any offer of cooperation is extended.**

PITFALLS

When the System Itself is Corrupt

A new ACA cannot cure or substitute for bad governance. Rather, it can address corrupt areas (even deeply corrupt ones) within a governance environment that is otherwise generally sound. ACAs can only sustain improvements in corruption in an environment in which other institutions are also improving more generally. Short-term success is sometimes possible in a dysfunctional environment, but the achievements are unlikely to outlive the incumbent regime.

ACAs are usually not capable of addressing the larger forces driving systemic corruption. Most obviously, ACAs cannot be effective in a situation where essentially every important institution is compromised. Even if this is not the case, an ACA is essentially a response to symptoms of a more problematic disease. Anticorruption agencies cannot themselves address macroeconomic distortions, the lack of credible courts and watchdog agencies, political imbalances, regulatory incentives toward bribery and rent-seeking and other large-scale “drivers” of corruption. ***There is little likelihood that disciplined corruption-fighting machinery, such as an ACA, can materialize in a deeply corrupt environment. Promoters of ACAs need to be aware of their limitations, and adjust expectations accordingly.***

We should also bear in mind the political environment in which ACAs must operate. Johnston suggests that “there is no way to attack the corruption problem without raising fundamentally political questions about the ways people – both public and private – pursue and use power, and about the people and standards to which they should be held accountable.”² This is most obvious where the state is weak and corruption is

organized along patrimonial lines. In this case, the distribution of illicit rents may be so systematized that it makes little sense to think of it as a weakness of the political system – it is the political system. Even where this is not the case, politics sets the conditions in which an ACA operates.

In situations such as this, where politics do not ensure effective checks on government behavior, there is a serious risk of political manipulation and predation. This risk grows with the tendency to concentrate powers in these agencies.

Diversification of Resources and Duplication of Efforts

The risk of diversion of resources and duplication of efforts is especially important in countries with fewer resources, less mature political systems, and more powerful patronage networks. ACAs sometimes skim off the ‘best and brightest’ from core agencies, such as the Office of the Prosecutor, by offering higher salaries and prestige. This can lead to a marginalization of offices that should ideally be strengthened by donor anticorruption initiatives. Effort and resources are often wasted, and that, in turn, can reinforce public cynicism. Worse, the powers concentrated in an ACA could be used for political repression and even serve as instruments of corruption themselves.

Cooperation of Other Governance Agencies

An ACA’s success depends on cooperative relationships with other elements of government. In a sense, this is a strength, since it forces anticorruption champions to achieve strategic consensus and to commit to concrete forms of cooperation before moving forward. Unfortunately, this is rarely the case, and cooperation often breaks down even in cases where it was initially achieved. As a result, ACAs are regularly frustrated by

their inability to secure information, cooperation, and prosecutions. Without cooperation and “buy-in” from other government agencies, ACA’s efforts may prove to be fruitless.

Government Track Record

Most governments have laws on the books that allow them to fight corruption even in the absence of an ACA. If the government has demonstrated no use of existing anticorruption articles, then it is not obvious that an ACA would change this situation. One measurement of political will is the use of current anticorruption laws. If the government is vigorously applying existing laws, and serious problems still remain, then this demonstrates the need for a more sophisticated approach through an ACA. The ACA can emphasize the need for coordination and also focus attention on those areas that are not performing. Otherwise, in the absence of this government track record, the ACA may be an act of window dressing.

Likelihood of Success

Program designers need to keep in mind the limited applicability of other countries’ success stories. As experiments in other countries with the well-known model developed by Hong Kong’s Independent Commission Against Corruption (ICAC) have shown, success in one country does not mean that the same blueprint will produce such positive results elsewhere (Country examples are provided in the appendices and throughout this document). Many ACAs have started out in the most promising fashion, only to fall short for a host of reasons. Experience suggests that the majority of ACAs, which are numerous in the developing world, probably do not achieve the results expected of them in combating corruption. Some may indeed be actively harmful. In sum, calling anticorruption agencies into

existence is all too easy; it is difficult and expensive to make them work.

CRITICAL SUCCESS FACTORS

The literature on ACAs provides some suggestions about factors likely to yield success. These factors are described in further detail below and summarized in Box 1.

Establishment

The success of an ACA depends on its being carefully situated from the start within a set of well-defined support mechanisms. These include:

- A comprehensive anticorruption strategy including more parts of government than just the ACA;
- Careful planning and performance measurement;
- Independence;
- Realistic expectations; and
- Strong enough political backing (across class/party) to make it effective regardless of (political and personal) consequences.

The “constitutional moment” of establishing an ACA is critically important. This means capturing the momentum created by scandal and crisis, gaining consensus on a reasonably clear and realistic strategy, and mobilizing the resources to implement it. Hong Kong and New South Wales are perhaps the best examples of this approach.

Cross-agency coordination

Also important in the establishment of ACAs are cross-agency relationships. Anticorruption agencies depend to a large degree on cooperation from sister agencies. Securing this cooperation means either positioning the ACA at a point of

maximum influence or providing it other tools for encouraging – or extracting – help. For example, Hong Kong and Singapore imposed stringent legal duties of cooperation on government and the public. The Malaysian ACA follows a similar pattern and has benefited from both government and civic cooperation. For example, some 16 Deputy Public Prosecutors are assigned by the Malaysian Attorney General’s office to work on ACA cases. Additionally, the ACA and police recently established a Joint Committee to Combat Corruption, which helps expedite investigations, disciplinary actions, and the sourcing of information. In Australia, the New South Wales (NSW) ICAC works with other agencies to resolve problems that diminish effectiveness. In other cases, apparently well-positioned agencies suffer from a lack of coordination across government.

Some ACAs have had more difficulty, often due to the failure by the agency’s proponents and the agency itself, to use the urgency of reform to overcome resistance to change. In Argentina, the Anticorruption Office (ACO) has had this kind of experience. Its relationship with the courts has been poor. In 49 cases, the ACO had to defend its right to appear in the lower courts, despite (on two occasions) the federal appeals courts’ recognition of the ACO’s right to do so. This is a reflection of limitations due to lack of political cohesion within some governments.

Focus

In order to be effective, an ACA needs to be strategic in defining its focus. No agency can cope with an unlimited mandate; choices must be made. Experience suggests the following alternatives:

- An agency could focus on prevention and on monitoring government implementation of

anticorruption policy (foregoing a comprehensive mandate, as in Korea).

- Its jurisdiction could be mainly prospective (by limiting its concern with past cases, as in Hong Kong).
- It could choose cases selectively based on pre-defined standards (as in Argentina).
- It could deal only with the probity and reputation of the public service (as does the U.S. Office of Government Ethics).

The Korea Independent Commission Against Corruption (KICAC) is an example of an ACA with a well-defined focus. It focuses on prevention by supporting improvement of laws and institutions for the prevention of corruption, providing checks and balances between authorities in power, and implementing the whistleblower protection and reward system.

The New South Wales (NSW) ICAC in Australia takes a “test case” approach, choosing to pursue only those allegations (and only those institutional reform studies) that will result in high-impact action. The NSW ICAC retains the authority to prioritize complaints - and to refuse any explanations as to why a complaint was not pursued - if it deems this necessary for security and confidentiality purposes. It accepts “only matters with the potential to expose significant and/or systemic corruption or which otherwise involve matters of significant public interest...”⁴

The Hong Kong ICAC has an Assessment Panel that makes the initial determination as to whether a complaint is pursuable, and then refers hard cases (e.g. pursuable complaints that would require substantial resources) to its Operations Management Committee for decision.

It should be noted that many of the examples for critical success factors refer to the highly successful Hong Kong, Singapore, and New South Wales models. Given the fact the these models have only limited applicability and likelihood of success in environments significantly different from those in which they operate, adoption of these models should be viewed with careful attention to the country context.

Many ACAs have started out in the most promising fashion, only to fall short for a host of reasons. Experience suggests that the majority of ACAs, which are numerous in the developing world, probably do not achieve the results expected of them in combating corruption. Some may indeed be actively harmful. In sum, calling anticorruption agencies into existence is all too easy; it is difficult and expensive to make them work.

Argentina's ACO offers another example, using explicit social, institutional, and economic criteria for its selection decisions. Selectivity of focus is helpful in ensuring leadership, coordination, and attention to the anticorruption effort.

An ACA needs the ability to choose a progression of targets over time in order to establish legitimacy through "quick wins," and to avoid high-level battles until such time as they can be won. This strategic perspective also helps avoid fruitless battles (e.g., old cases or small infractions) and sequences interventions in accord with broader restructuring. However, where a selective approach is chosen, the ACA must have a strong ability to justify the choices of cases, as well as capable alternative institutions to pursue cases on referral. The selective approach can work only in an environment where the ACA is not vulnerable to charges of partiality. Further, implementing a strategic focus depends critically on the agency's internal management capacities and on appropriate external oversight.

Another aspect of focus has to do with breadth of jurisdiction. For example, an ACA may want to include the private sector in its scope of authority. The issue in determining the appropriate breadth of an ACA's jurisdiction is one of synergy: finding which activities are most efficiently and effectively dealt with together. It is a balancing act. Private-sector behavior is certainly a factor in corruption, but an ACA can become over-extended if its jurisdiction continues to expand beyond what synergy would require – for example, from bribery to various forms of revenue fraud, money-laundering, etc. – and without the necessary increase in resources. **In short, the definition of an ACA's jurisdiction is an important strategic decision that needs to take into account capacities, relationships, and resources.**

BOX I. Overview of Factors Cited in ACA Successes³

Establishment: embedded in a comprehensive anticorruption strategy, careful planning and performance measurement, realistic expectations, strong enough political backing (across class/ party) to make it effective regardless of (political and personal) consequences.

Cross-agency coordination: success depends to a large degree on cooperation from sister agencies. Securing this cooperation means either positioning the ACA at a point of maximum influence or providing it other tools for encouraging or extracting help.

Focus: on prevention and monitoring government implementation of AC policy (vs. comprehensive mandate), mainly prospective (only limited concern with past cases), case selectivity based on clear standards, emphasis on probity and reputation of public service, de-emphasize investigations and prosecutions.

Accountability: legal standards, judicial review, public complaints and oversight, answers to all branches of government and the public, size kept to a minimum, no donor overload, precise and comprehensive expenditure accountability.

Independence: placement and reporting responsibility of agency ensures independence, appointment/removal procedures for top officials ensures independence, absence of day-to-day political interference, direct role for public stakeholders, fiscal/budgetary autonomy (See Australia's New South Wales Commission for a good example of independence and Tanzania's Prevention of Corruption Bureau for an example of weak independence).

Powers: strong research and prevention capabilities, can access documents and witnesses, can freeze assets and seize passports, can protect informants, can monitor income and assets, jurisdiction over chief of state, can propose administrative and legislative reforms.

Staff: well-trained -- including sufficient numbers with highly specialized skills, well-compensated, subject to integrity reviews and quick removal, strong ethic of professionalism and integrity, high morale.

Other resources: sufficient funds, adequate facilities and assets, high-level information sharing and coordination with other government bodies.

Enabling environment: macroeconomic stability and absence of crippling distortions, corruption may be deep but is not entrenched across the whole system (i.e. some people and sectors are clean).

Complementary institutions: adequate laws and procedures, basic features of the rule of law including functioning courts, free and active media, NGOs/public interest groups, other capable institutions such as supreme audit and central bank.

Complementary legislation: Freedom of Information legislation either exists or promoted by the government as a means to increase transparency and access to information. Penal and criminal procedure codes support the work of the ACA. The country has signed regional and international treaties that allow for cross-border corruption investigation.

Accountability and Independence

Experience suggests that formal accountability and formal independence are both somewhat overrated. While they are desirable in their own right, they do not appear to be a determining factor of an agency's performance. ***There are some interesting examples of ACAs having essentially no formal autonomy, and yet seeming to operate independently in practice.*** The Hong Kong ICAC is the prime example, with its independence of action guaranteed less by structural autonomy than by external constituencies. Another example is the Argentine ACO, which is a special unit of the Ministry of Justice and Human Rights, responding directly to the Ministry and ultimately to the President of Argentina. It has no structural safeguards or guarantees of independence. Its members are political appointees under provisional contracts. However, experts suggest that its non-partisan staff and its effective work to date have enabled the ACO to shield itself from political interference.

On the other hand, many formally independent agencies are nevertheless subject to the political dictates of a dominant executive, party, or clan. While placement of the ACA in the office of the chief of state may bolster its strength, this is likely to compromise its independence and weaken it. Thus, formal independence, like formal dependence, can be overridden by political factors. It does appear, however, that an agency's de facto autonomy to operate in a professional and non-partisan manner increases its prestige, hence its ability to mobilize political support and cooperation for its aims. In this case, the ACA can build long-term credibility for its anticorruption mission— a virtual impossibility for politically manipulated or subordinated agencies. Accountability has much the same effect. It also affords observers within and outside government the opportunity to monitor the agency's performance and to propose corrections.

It is important to ask who provides the oversight of the ACA. Accountability can be assessed in terms of the legal standards to which it is held; if it is subject to judicial review and recourse; if public complaints are addressed appropriately; and if the ACA can be checked appropriately by other branches of government and by the public. Internal controls can ensure that expenditures are tracked. Finally, donors should consider the risk of "donor overload" and whether the enthusiasm to support an ACA will outstrip its capacity to use the resources responsibly.

Powers

The powers given to an ACA play a critical role in performance. A successful ACA should have strong research and prevention capabilities, along with comprehensive investigatory authority. The Hong Kong's ICAC and Singapore's Corruption Practices Investigation Bureau (CPIB) provide the model for this, having powers to access documents and witnesses, freeze assets and seize passports, protect informants, monitor income and assets, and propose administrative and legislative reforms. ICAC and CPIB have authority both to respond to complaints and to undertake investigations on their own initiative. Importantly, neither has the power to prosecute directly, but must refer findings to their justice authorities.

A necessary condition for successful investigations and prosecutions is having coercive powers – provided the agency has the actual ability to exercise these powers in practice. The coercive powers of many ACAs would probably be rejected as extreme in established democracies. For example, Singapore's CPIB has both the regular powers of the police as well as special powers.

CPIB may, for example, examine bank accounts, enter and search the books of banks, and require explanations of "unexplained" or "disproportionate"

wealth as well as certain asset transfers. The ability to employ heavy sanctions strengthens CPIB's hand. These include stiff penalties for offenses, legal duties to furnish information, and stringent prohibitions on obstruction or failure to comply. Broad definitions of corruption, attempts, abetting, and conspiracies in the penal law⁵ also contribute to an ACA's effectiveness. At the same time there is potential for an ACA to overextend its authority, and therefore there is a need for effective checks and balances.

In the Philippines, the Ombudsman has additional powers to those of the ICAC model. It has anticorruption responsibilities, but it also has the general function of a classical ombudsman to address injustice and maladministration. Commentators have suggested that the prosecutorial role does not fit well with the ombudsman's function as trusted mediator.⁶ Additionally, the Ombudsman makes binding determinations of law in administrative cases, and brings prosecutions against senior officials in the special anticorruption court – the Sandiganbayan.

Most ACAs benefit from the powers and immunities of police officers. Other important powers and privileges, including legal immunity and the power to protect witnesses and confidential information, are often included in the statutory powers of ACAs.

Resources – Staff and Budget

One often hears that the success or failure of ACAs hinges on the quantity of resources available. While having adequate resources is an important consideration, it is no guarantee of success. Experience in Hong Kong and Singapore strongly suggests that budget and staff numbers alone may not be that critical. In those instances, agencies with vastly different resource bases achieved comparable levels of success.

Staff

ACAs depend on well-trained personnel, including sufficient numbers with highly specialized skills. Staff should also be hired based on merit, well-compensated, subject to integrity reviews and quick removal, and endowed with a strong ethic of professionalism. While one cannot specify a benchmark number of staff, due to the variations in agency design and context, it is quite clear that success in fulfilling a defined mission depends on matching the agency's objectives with a sufficient complement of highly professional and motivated employees. Combining compensation with accountability is a key requirement. Likewise, employees should enjoy a level of tenure security and appropriate immunity from civil litigation. The selection and appointment of the leadership of the ACA ideally should be a responsibility shared among several institutions.

For example, the Hong Kong ICAC's staff are recruited from government as well as the private sector and appointed to contract terms of two to three years, renewable. Special qualifications, screening procedures, and remuneration packages are in place, separate and distinct from the civil service system, to ensure recruitment on merit grounds. The employees are given a "gratuity" of 25 percent of gross salary on the condition of satisfactory performance at the end of their employment contracts.⁷ Other countries have not been so successful, where, for example, economic conditions have made it impossible to adequately compensate, recruit, and retain highly professional staff.

The head of the ACA needs to have authority over the staff even if the staff is appointed by government. This will diminish political influence from outside the ACA over the staff and further strengthen the ability of the ACA staff to work based on merit standards. If staff are

not able to perform duties properly or create unnecessary obstacles to fulfilling the mandate of the ACA, the head of the ACA needs to have the authority to release them from duty. Additionally, checks and balances on the performance of the ACA head are necessary, with clear performance indicators that, if not met, will lead to reappointment for the position.

Budget

Large budgets do not correspond closely with strong capability and success. Rather, budget needs depend on the ACA's mission. Several examples bear this out. Hong Kong (\$91 million and 1,300 staff) and Singapore (\$3.2 million and 71 staff) provide the starkest contrast, although each is quite effective within its mandate.

Enabling Environment

An obvious limitation on the utility of ACAs in many of the countries with donor presence is the absence of conditions for success. Some of these conditions are discussed below.

Complementary Institutions and Conditions

Critical external factors include adequate laws and procedures and basic features of the rule of law. The latter would include:

- Functioning courts;
- Free and active media;
- Energetic community of NGOs and public interest groups;
- Other capable agencies of restraint such as capable financial management authorities, supreme audit institutions and central banks;
- Freedom of Information Law; and
- Regional and global treaties that provide for cross-border

exchange of information and resources.

Successful ACAs do seem to operate in environments characterized by effective laws, procedures, courts, and financial system governance -- and ACAs are not successful in the absence of these factors. Additionally, media and civic organizations have helped make a fundamentally open and cooperative approach to corruption control successful in Hong Kong and Australia and have likely been important to modest successes achieved in other countries.

Background conditions

Other positive environmental factors would include:

- Macroeconomic stability;
- Political stability;
- Confidence that an attempt to challenge corruption would not lead to violence;
- Public order;
- Absence of crippling distortions (such as widespread famine or conflict, recent genocide, large populations of Internally Displaced Persons);
- An environment where corruption is not entrenched in the whole system (though it may be deep in a few sectors); and
- Legislation and practice that supports freedom of expression and decriminalizes defamation.

These positive conditions often are not found in many of the poorest countries. Poverty and economic crises undermined anticorruption initiatives in many countries, including Argentina, Tanzania, and Uganda. As important, corruption that touches virtually all of government and the private sector makes it

extremely difficult for an anticorruption program to gain traction; there are too many opposed interests with the power to undo it. This appears to be the case in India, the Philippines, Tanzania, and many others. Kaufmann, among others, stresses the centrality of economic and public sector restructuring in determining the overall strength of corruption drivers and anticorruption policies.⁸ Ultimately, donors must analyze and take into consideration this kind of environment before deciding whether to support an ACA.⁹

Political Will

It is important to determine which groups and individuals and other influences within the political economy are driving (or obstructing) the efforts of an ACA. Not surprisingly, one study finds **political leadership's self-preservation to be the primary motivating force behind anticorruption campaigns**¹⁰. Leaders' political insecurity determines the character of the campaign. This means timid and superficial efforts led by incumbents, as contrasted with the more rapid and intensive cleanups forced by opposition or political change – with the latter targeting high officials to a greater extent.

Another study showed that elected leaders set up ACAs and investigations as investments in “integrity capital,” usually in environments of growing public outrage around corruption.¹¹ However, in an excess of zeal, they set up mechanisms with greater power and autonomy than they are willing to tolerate. This is exemplified when anticorruption investigations focus on political leaders, who then strive to undermine those efforts and curtail the investigators' powers.

PERFORMANCE INDICATORS

How does one measure the performance and impact of an ACA? One approach is to gauge the degree to which an ACA has reduced corruption, using data from corruption surveys, along with cross-country and international indicators and rankings. More nuanced approaches would draw on findings from studies on a variety of government activities including the efficiency of government expenditure and service provision, comparisons across time in procurement and infrastructure costs, and even the incidence of civic initiatives against corruption (e.g., as reported in the press). However, it is almost impossible to identify causal links between ACAs and these macro-level outcomes, especially in light of the need to account for the influence of structural reforms and other important factors.

Thus, we should be wary of simplistic assertions about any ACA's impact on corruption. Indeed, many agencies' missions are broadly defined in terms of reducing corruption or changing values – outcomes that are, at best, very hard to measure. **Measurement of results is only feasible where objectives are concretely defined and reliable data are available on agency outputs and intermediate outcomes, such as successful prosecutions, moneys recovered, and preventive recommendations adopted.**

The choice of indicators depends upon the type of support the donor is providing. If, for example, the donor is supporting a specific function or task of the ACA, indicators should be related to that function or task, and not to the ACA's performance in general. Indicators should serve as benchmarks of the impact donor funds are designed to achieve, and resulting from inputs or activities they

support. Indicators such as the passage of a law or regulation, or the number of individuals trained or articles published do not demonstrate political impact. Examples of appropriate indicators include:

- Percentage of cases investigated that are brought to judgment;
- Percentage of complaints that resulted in administrative remedies;
- Specific institutional changes in response to complaints that result in greater transparency;
- Percentage of requests for information that are granted (and that are granted on appeal); and
- Positive public opinion polls on the performance of the ACA.

DONOR RESOURCES

USAID has typically made relatively small investments in support of ACAs. Funding levels range from \$5,000 to \$500,000 per year. Support has included providing modest levels of technical assistance for specific purposes, assisting with ACA design and recruitment of meritocratic staff, drafting of relevant laws, sending staff on International Visitors' programs, and supporting broader capacity development programs related to training, technical assistance, and equipment.

In some cases, the decision to establish an ACA is donor driven. If donor financial commitments comprise the major portion of the ACA budget, there is a high risk that the initiative may not have real political backing and will consume donor resources without results. At minimum, the ACA may not be sustainable if provision for post-donor funding is not made in advance. **Donors**

should consider strategic investments that improve the technical capacity of the ACA but they should not be core funders of an ACA. The government must own the initiative and demonstrate political will by providing adequate resources for the ACA to carry out its mandate.

PROGRAMMING OPTIONS

The following may be fruitful areas of donor cooperation with an existing ACA:

COOPERATION AND INFORMATION-SHARING IN A PRIORITY DONOR SECTOR

To the extent a donor has sectoral programs (e.g., healthcare, regulatory reform, financial services, energy, or utilities) that are affected by corruption, there are opportunities for a donor and an ACA to collaborate to improve performance in that sector. A donor could provide access to information on sectoral governance practices, support capacity development, and foster relationships with key officials and relevant NGOs. At the same time, the donor's programs would benefit from the ACA's heightened scrutiny of the sector, attention to corruption issues and sanctions, and, perhaps, from institutional reforms aimed at preventing corruption.

IMPROVED RESEARCH CAPACITY, DATA, AND INDICATORS ON CORRUPTION AND ON ACA PERFORMANCE

This is an area of weakness for many anticorruption agencies. A donor could support the design and implementation of research projects on the patterns, impacts, and trends of corruption, as well as efforts to combat it. A donor also

could provide advice on good practices in public management, developing performance indicators, and setting up systems for collecting, verifying, and publishing the data. This would presumably spark interest both within government (advertising their anticorruption efforts) and in civil society (enhanced oversight of the ACA). This would also help ACA management to define their objectives and to focus on meaningful performance targets.

COOPERATION AND MONITORING BY CIVIL SOCIETY GROUPS

A donor could bring civil society partners and the ACA together to help create or deepen a framework for interaction, including mutual support and independent monitoring. NGO advisory committees along the lines followed in Hong Kong could play a constructive role if carefully structured, focused, and appointed.

TECHNICAL ASSISTANCE AND EXCHANGE

A donor may provide a wide range of technical assistance focusing on the development of systems, staff training, record keeping and analysis, and related functions. Cooperation with credible ACAs in other countries may also have a large payoff. Again, this assumes coordinated aid that is targeted to addressing real constraints, as well as building in appropriate incentives. Donors can also direct technical assistance to strengthening the enabling environment for the ACA through such means as promulgating a Freedom of Information law, strengthening rule of law, and training for judges who will handle corruption cases.

COMPLEMENTARY FUNDING OF RELATED ANTICORRUPTION INSTITUTIONS AND FUNCTIONS

A donor may choose to support any of the other institutions and functions discussed above which contribute to the enabling environment or the strength and efficacy of the ACA itself.

QUESTIONS AROUND ASSESSING POTENTIAL PROGRAMMING OPTIONS

DOES THE ACA'S CAPACITY INFLUENCE WHETHER A DONOR SHOULD ENGAGE?

If the host country has a high-performing ACA, it might be a worthy partner in joint activities – for example anticorruption efforts in a high-priority donor sector such as health or energy. However, if the agency is already high-performing, it probably does not need material support and may be better off without it, absent a showing of specific need. At the other end of the spectrum, ***an underperforming ACA with none of the prerequisites of success is unlikely to make effective use of donor support or achieve expected results.*** This may seem obvious, but international donors are well-known for pouring capacity-building resources into “weak” institutions that show little prospect of becoming effective.

The harder cases fall in between these extremes. Here it does not make sense to lay down guidelines in the abstract;

however some things to bear in mind include:

- Most of the critical success factors cited above should be in place;
- The agency should either have a track record of partial success or excellent prospects under new leadership; and
- The cooperation or support should be targeted to address a well-understood constraint.

On the last point, programmers should bear in mind the kinds of constraints that aid can address, such as technical and resource shortcomings. It may not be productive to bolster an ACA when the conditions of its establishment, its structural posture, and the relevant external factors are adverse. **Further, cooperation, and especially material support, should be forthcoming only when the donor is satisfied that the host country government has made a credible commitment of resources to the ACA's mission.** This guideline applies with greater force to ACAs than to other public institutions, given the potential use of an ACA as “window dressing.”

WHAT IF THERE ARE MULTIPLE DONORS FUNDING AN ACA?

A recent review of donor support for ACAs points out a number of pitfalls.¹² In the five countries studied (all in sub-Saharan Africa), the international donors, having identified anticorruption as a top priority, scrambled to find worthy activities and recipients to fund. One result was donor overload, with agencies receiving unsustainably large proportions of their funding through aid. The results are predictable: the imposition of donor priorities, thereby undermining agency

incentives and “ownership” of the program. Worse, funding from multiple donors came with inconsistent objectives and performance indicators. The donors worked within their programmatic “stovepipes,” failing to support necessary back-office functions within the agencies, such as financial management, and paying inadequate attention to the ACAs’ relationships with prosecutors and others, whose cooperation they needed. USAID can play a role in coordinating donors’ responses to an ACA or encourage a multi-lateral agency to play that role with USAID as an influential participant.

WHAT KIND OF SUPPORT SHOULD DONORS PROVIDE?

Direct material support to an agency should be a last resort. A better option, though admittedly difficult to implement, would be a program involving cooperation across agencies of government and civil society, based on an agreed strategy or on a consensus that one is to be developed. This would make the donor less of a “patron” to a specific agency, and more of a facilitator and advisor to engaged stakeholders. On this basis, a program can be designed to maximize cooperation and synergy for anticorruption objectives, rather than simply to bolster a “client” agency. Donor inputs and strategic objectives then can be translated into intermediate performance indicators of the kind presented in the ACA data table in Appendix 2.

WHAT INTERVENTIONS WOULD BE APPROPRIATE WHEN A COUNTRY IS CONSIDERING THE ESTABLISHMENT OF AN ACA?

Donors would be well-advised to focus on existing governance institutions such as courts, audit institutions, and regulatory bodies, unless a compelling case for

establishing an ACA has been made, and factors supporting likely success are clearly in view. If such is the case, then some start-up support might be justified.

IS AN ACA LIKELY TO BE SUCCESSFUL IN THE COUNTRY IN QUESTION?

It is impossible to predict whether an ACA will be successful, or even partially so. But the section on Enabling Environment suggests some of the external prerequisites, and the section on Critical Success Factors outlines some of the characteristics of a successful model. However, the most important ingredient for success is undoubtedly political will. There must be credible demonstration of broad-based commitment to the fight against corruption on the part of the government before a donor should consider supporting the institution.

WHAT ARE THE RISKS ASSOCIATED WITH SUPPORTING AN ACA?

Observers of Singapore, in particular, wonder whether the anticorruption benefits of CPIB outweigh the risks posed by its draconian powers and lack of transparency. Other risks include:

- Being ineffective;
- Abuse of power;
- Facilitating witch hunts-- targeting political opponents or the rich and powerful;¹³
- Increasing the perception of corruption - surveys and cross-country indices may infer a rise in corruption, as a result of awareness-raising activities of the ACA;
- Distracting authorities from the core governance functions that

are prerequisites for the success of the ACA; and

- Providing false legitimacy.

WHAT IS THE BEST APPROACH WHEN THE GOVERNMENT ALREADY HAS AN ACA, OR WHEN A DONOR IS ALREADY POLITICALLY COMMITTED TO ITS SUPPORT?

In cases in which a donor is committed to supporting the establishment of an ACA, or one already exists in the country, the donor should seek to focus its support on those aspects or activities of the ACA that are most likely to have an impact, rather than those which might be more visible, publicly palatable, or politically expedient. One approach would be to provide assistance in narrowing and defining the role and mandate of the ACA, as well as its structure. If these have already been established, emphasis might best be put on the prevention and education elements of the ACA's portfolio and should contribute to enhancing transparency and accountability of the ACA itself and the government in general. The donor should also seek ways to support civil society/media involvement in the ACA through grants to NGOs and others. An ACA that is not transparent is unlikely to be a real tool to fight corruption.

ARE THERE ANY LEGISLATIVE BARS TO USAID ASSISTANCE TO ACAS?

Section 660(a) of the Foreign Assistance Act of 1961, as amended (the FAA), prohibits the use of FAA funds to provide training or advice, or provide financial support, for police, prisons, or other law enforcement forces for any foreign government. USAID's Office of General Counsel considers a law enforcement

force to be any entity that has authority to carry out certain functions normally exercised by a law enforcement force, such as authority to carry weapons, make arrests, search private premises, interrogate in private, supervise confinement, and initiate prosecutions. As described in this publication, ACAs may be vested with some of these authorities. Even in such cases, there may be exceptions to the prohibition of FAA section 660(a) available so that such ACAs may receive USAID support. For example, beginning in FY 2005, and continued in FY 2006, foreign assistance appropriations bills have included a provision that exempts assistance "...to foster civilian police roles that support democratic governance...".¹⁴ This authority is available in FY 2007, pursuant to the Continuing Resolution. Thus, the determination of whether an ACA constitutes a law enforcement body and whether assistance could be provided under this or some other exemption should be pursued with Mission management and the cognizant Regional Legal Advisor or with the Office of the General Counsel.

IS THERE A BETTER APPROACH THAN AN ACA? WHAT ABOUT OMBUDSMAN, FINANCIAL INTELLIGENCE UNITS OR ETHICS OFFICES?

The prosecution/enforcement element of ACAs is often the aspect of such organizations that makes them vulnerable to political manipulation. An Ombudsman may carry out the prevention and education functions of the ACA without engendering the strong resistance that ACAs with enforcement duties sometimes attract. Thus, if prevention and education are the goal, an Ombudsman may be a better approach.

Financial Intelligence Units are highly specialized technical offices designed to

gather information and investigate complex financial transactions. They are an important tool for identifying and investigating corruption cases as well as money laundering and other financial crimes, but they do not constitute in themselves a complete approach to preventing, investigating, or prosecuting corruption.

Government ethics programs should be seen as a refinement to, not a substitute for, comprehensive civil service reforms. They can articulate goals but typically do not include enforcement or sanctions, and thus they are not appropriate in an environment of clientelistic public administration or extensive patronage.

Strengthening an existing independent audit authority or inspectorates within individual ministries - along with the ability of the legislative branch to take action on audits - can lead to effective results in stemming corruption. There are a host of other opportunities for minimizing corruption in many of the countries where donors are present. An ACA should never be seen as a silver bullet.

APPENDICES

APPENDIX I: COUNTRY EXAMPLES

US/European Multi-Agency Model

In examining the model of a strong, central anticorruption agency, it is useful first to consider the alternative which involves strengthening anticorruption capabilities across already-existing government agencies. This multi-agency approach (used by the U.S. and most of Western Europe, for example) involves putting measures into place to address gaps, weaknesses, and new opportunities for corruption. It usually combines traditional state institutions with one or more specialized anticorruption units or agencies.

South Africa's application of this model

An example of the multi-agency model used in a developing country context is South Africa, where the mandate is divided among the police, the prosecutor, the Auditor General, the SA Revenue Services, and the Public Service Commission. The Public Service Anticorruption Unit also has a coordinating function and is responsible for the development and implementation of the Public Service Anticorruption Strategy.

The US integrity framework

Within the executive branch of the US government, a number of government offices exercise oversight over officials' behavior. Separate Offices of Inspector General operate within 58 departments and agencies to prevent and detect waste, fraud, and abuse.¹⁵ Complementing this work, the Department of Justice and its investigative arm, the Federal Bureau of Investigation, investigate and prosecute corrupt acts. The Office of Special Counsel conducts its own investigations and prosecution of prohibited personnel practices in the federal government, with an emphasis on protecting whistleblowers. This decentralized system of oversight distinguishes the U.S. from many countries where an anti-corruption agency carries out most of the oversight and investigative functions. While several federal agencies and state and local governments have Ombudsmen, there is no national Ombudsman covering the entire public sector in the U.S.

Within each branch of government, other offices are charged with overseeing officials' compliance with standards of conduct and financial disclosure requirements. In the executive branch, the Office of Government Ethics oversees compliance with these provisions, operating through a Designated Agency Ethics Official posted within each of the 129 executive branch agencies.¹⁶ In the other branches of government, the Senate Select Committee on Ethics and the House Committee on Standards of Official Conduct monitor disclosure and standards of conduct of members of Congress, and the Judicial Conference of the United States reviews the conduct of judges, judicial employees, and public defender employees. A fundamental key to the success of all these arrangements is freedom of information, along with an active civil society capable of evaluating and publicizing information that may indicate corrupt behavior.

Hong Kong and Singapore – the Single-Agency Model

Singapore, with its Corruption Practices Investigation Bureau (CPIB), and especially Hong Kong, through the Independent Commission Against Corruption (ICAC), have provided the standard for powerful, centralized anticorruption agencies. Both Singapore (in the 1950s and '60s) and Hong Kong (in the 1970s) were faced with crises of legitimacy that threatened investor confidence and political stability. Their response was to create a new kind of agency, untainted by association with corrupt elements, and equipped with the power to make headway against entrenched corruption. Importantly, this arrangement helps to centralize information and intelligence on corruption, and can reduce the coordination problems that arise when several ministries and agencies have authority in this field.

Despite their similar origins and design, ICAC and CPIB take starkly different approaches to the implementation of a single-agency strategy. ICAC brings huge resources (approximate budget of \$91 million and staff of 1300, as of 2000) to bear on a broadly defined set of tasks. These include following up all complaints and allegations “without fear or favor,” and linking these operations to the development of reforms and preventive measures, to an ambitious program of community outreach, and to citizen boards providing continuous monitoring and input. In contrast, CPIB is a small, tightly-run unit. Its resources (approximate budget of \$3.2 million, staff complement of 71, based on early 1990s estimates) are disproportionately small compared to those of ICAC.

The investigative mandate of CPIB is about as broad as that of ICAC. However, CPIB is far more secretive. It is not required to divulge budgets or operational details, to justify decisions, or to submit to citizen oversight. While both agencies benefit from sweeping investigatory powers and privileges, CPIB is less constrained both in terms of procedure and substantive presumptions.

Both agencies are considered highly successful. ICAC prosecuted and convicted a number of senior officials and powerful businessmen, changing the country’s attitudes toward corruption through example, outreach, and education, and sought citizen input in both oversight and reporting of corruption cases. CPIB helped to create a clean administration in place of the former systemic corruption, and has exercised a deterrent function by investigating a number of “big fish,” including ministers, MPs, and senior directors of government agencies and companies.

The single-agency model does not move all anticorruption functions into a single bureau – this would be impossible under a democratic constitution. Instead, it places a number of key capabilities, responsibilities, and resources under one roof, thereby creating a powerful centralized agency able to lead a sweeping effort against corruption. This still requires the ACA’s interaction with other entities having jurisdiction in the field, notably courts, prosecutors, and line ministries in areas likely to be affected by corruption, such as revenue and public works. By contrast, the multiple-agency approach is less ambitious. It avoids setting up a strong “lead” agency in the anticorruption field, thus posing a lower risk than the single-agency approach of upsetting the balance and separation of governmental powers but also imposing higher costs in terms of coordination and information sharing.

ACAs that follow the ICAC Model

The Hong Kong ICAC model has proven enormously influential. The last two decades have seen the emergence of scores, if not hundreds, of anticorruption agencies around the world. Of these, there are perhaps as many as 30 to 40 at the national level that fit the ICAC profile of a strong, centralized agency, and more at sub-national levels. Among the most prominent examples are the following:¹⁷

Argentina: The Anticorruption Office (Oficina Anti-Corrupcion, ACO)
<http://www.anticorrupcion.jus.gov.ar>

Australia: The Independent Commission Against Corruption (ICAC) of New South Wales
<http://www.icac.nsw.gov.au/>

Botswana: The Directorate on Corruption and Economic Crime (DCEC) <http://www.gov.bw/>

Ecuador: The Commission on Civic Control of Corruption (Comision de Control Civico de la Corrupcion or CCCC) <http://www.comisionanticorrupcion.com/index.asp>

Korea Independent Commission Against Corruption (KICAC) http://www.kicac.go.kr/english/E_Index.jsp

Malaysia: The Anti Corruption Agency (Badan Pencegah Rasuah Malaysia, ACA)
http://www.bpr.gov.my/cda/m_home/index.php

The Philippines: The Ombudsman <http://www.ombudsman.gov.ph>

Tanzania: The Prevention of Corruption Bureau (Taasisi ya Kuzuia

Rushwa, PCB) <http://www.tanzania.go.tz/pcb/>

Thailand: National Counter Corruption Commission (NCCC) <http://www.nccc.thaigov.net/>

Uganda: The Inspector General of Government (IGG) <http://www.igg.go.ug/>

A Model of Accountability- Hong Kong's ICAC and Australia's NSW ICAC

The Hong Kong ICAC sets the standard here. Accountability begins with strict responsibility of ICAC and senior officers to the Chief Executive (formerly the Governor), and of the agency to the legislature, which reviews ICAC's annual reports and approves the agency budget as part of the general revenue. Further, a 1996 amendment to the ICAC Ordinance strengthened the role of the judiciary in authorizing search warrants – to bring ICAC into compliance with Hong Kong's 1991 Bill of Rights.¹⁸ The most famous of ICAC's accountability mechanisms are the citizen oversight boards, known as Advisory Committees. These are appointed by the Executive to review all of ICAC's policies and functions, and must be chaired by private citizens. The Operations Review Committee is arguably the most strategic, since it oversees the largest and most powerful department. The Committee does not have formal powers to compel the production of documents and information, but does have a straight line of responsibility to the Commissioner and the Executive. There is also a separate and independent Complaints Committee, which reviews all complaints against the agency. An internal investigation and monitoring unit follows up on complaints.

The legacy of the Hong Kong ICAC is clearest in Australia, where the New South Wales agency solicits citizen oversight and input, and a major role is played by an Operations Review Committee, whose membership includes private citizens. Also, the Freedom of Information Act applies, imposing a duty on the agency to disclose, and in some cases, publish its records. In addition, the NSW ICAC has a mechanism for handling complaints against its staff. The most important departure from the Hong Kong model is the NSW ICAC's authority to hold investigatory hearings – and to hold them in public where appropriate. This form of “government in the sunshine” gives the general public the ability to oversee parts of ICAC's operations directly.

An example of Independence- Australia's New South Wales Commission

A good example of the benefits of independence guarantees is the case of Australia's NSW ICAC. In formal terms, it is a government corporation with the powers of a standing committee – this separates it from cabinet ministries and links it to parliament. The ICAC Commissioner is appointed by the NSW Governor (to a five-year non-renewable term), with the approval (and veto power) of the Parliamentary Joint Committee on the Independent Commission Against Corruption. The Governor also appoints any Deputies. The NSW ICAC has its own budget line from the NSW legislative appropriation. It reports and is accountable to the Joint Committee – and this accountability, like that of ICAC's Hong Kong counterpart, clearly establishes its independence from the executive.

A lack of independence- Tanzania's Prevention of Corruption Bureau

A counterexample is the Tanzanian Prevention of Corruption Bureau (PCB), which was revitalized under the Mkapa regime in the early 1990s. The PCB appears to have been well-positioned, but in fact suffers from poor inter-governmental coordination and a lack of effective independence. The agency is located at the pinnacle of government, in the President's Office, and hence should be able to draw on the full power and prestige of the chief of state. This is buttressed by the existence in the President's Office of the Good Governance Coordinating Unit, a body charged with ensuring coordinated government action on the anticorruption strategy, and with providing policy guidance to the PCB in accordance with that strategy. The Unit was established to sustain the momentum built in the mid-1990s by the Warioba Commission, President Mkapa's anticorruption campaign platform, and the development of Tanzania's first national anticorruption strategy. These factors have

been enough to extract commitments of support from other relevant actors in government. Also, PCB's collaboration with NGOs and the media has been significant. However, this apparent consensus did not necessarily carry through into effective action against corruption. One explanatory factor is that other agencies do not have an express legal duty to cooperate with and facilitate the work of the PCB. In addition, PCB has never been given sufficient resources to carry out its mandate. The cooperation of the public also was slow in coming, due to public apathy, fear, and lack of awareness of PCB and its mission. Looming above all this has been the political equation. President Mkapa did not assume office as the head of the ruling party – that role, in actuality, still belonged to former President Julius Nyerere, who continued to command ruling party loyalists until his death, and was known to oppose reforms that posed a threat to the party's dominance. Even assuming that the President continued to have the strongest possible interest in combating corruption, his actual power to do so has been significantly constrained by this and other political factors.

APPENDIX 2: PERFORMANCE MEASURES

It is important to distinguish between (a) the level of corruption in a given country or district, and (b) how well certain core anticorruption functions are performed. In principle, the two are related, but the latter is essentially an output measure. These output measures could be linked, with only a few realistic assumptions, to measures of proximate impact or intermediate outcomes. Examples include the number of successful prosecutions, the number and quality of institutional reforms designed to combat corruption, and the intensity of anticorruption sentiment and activity across society.

Output measures from an ACA may not tell us much about the effectiveness of the agency. Therefore, one approach is to look at this data and to apply a qualitative sense of whether the agency and activities are well-targeted, and whether the outcomes are as beneficial as they could be. For example, simply looking at the numbers of investigations started or completed does not tell anything about how such numbers correspond to the overall level of corruption in a country, about the quality of the effort or the outcome of those investigations. Percentages of convictions may be instructive, but again, the number does not convey the quality of the proceedings, nor the harshness or deterrent effect of penalties imposed. An example of an indicator which may be more telling on its own is the success rate of implementation of an ACA's recommendations.

Some ACAs, such as Hong Kong's ICAC, report benchmarks against which their performance can be measured. For example, they report raw numbers of cases and studies, case prosecution and conviction rates, and indicators of efficiency such as time lapses in complaint response and case disposition. ICAC also breaks out its prosecution numbers by sector and by offense. On the other end of the spectrum, Singapore does not report any results for its CPIB. Yet it is perceived to be very successful, because of its professionalism and the long-term impact of the overall anticorruption effort. Other data from selected ACAs are given in the table below.

How well did the agencies reviewed here perform in terms of their policy mission and goals – and why? Here is how the agencies listed in the table compare on performance in the six ACA task areas (numbers on an annual basis, various years):

Receive and respond to complaints: The Philippines had the largest intake in terms of raw numbers. However, on a per capita basis – and given the reported levels of corruption in the countries in the table below – these numbers are in effect quite low as compared to Hong Kong's. New South Wales and Botswana had lower totals, but were still competitive on a per capita basis. Botswana's total is especially remarkable, since it reports 74% of complaints as having voluntarily identified themselves. Hong Kong is the only government reporting on its efficiency in handling complaints.

ASSESSING ACA RESULTS

What does the data say about agency performance? We present a sample of performance data from anticorruption agencies in the table below. *

**Though this data is not the most current, it demonstrates differences in the value of various measures and in performance of various ACAs.*

Agency/Indicator	Cases, Investigations, Disposition	Prevention, Ethics, Asset Declaration, Information, Outreach
ARGENTINA ACO (1999-2002)	1,784 investigations started 81% of investigations concluded 9% decrease in unsolved cases 489 cases referred to the judicial system. 317 referred in 2001 14% increase of cases under judicial investigation between 2000 and 2001 44 prosecutions, 20 cases dismissed	99% compliance rate by the civil servants required to file a financial disclosure statement
AUSTRALIA NSW ICAC (2000-2001)	1,509 complaints with 2,058 allegations and 265 recommendations for reform arising out of investigations 6 investigative reports 10 prosecution, 10 disciplinary action proceedings	4 prevention reports, 7 research reports published 148 recommendations for reform fully implemented, 74 partly implemented 3 major conferences, and 5 government training events held
BOTSWANA DCEC (2000)	1,475 complaints received. 74% or 1096 in which the complainants identified themselves, 379 were made anonymously 390 investigations commenced 1,085 cases either referred to other bodies or no action was taken	145 presentations to public on corruption
HONG KONG ICAC (1999)	3,561 graft reports received 216 cases identified and investigate via own initiative 99% of those making graft complaints interviewed within 48 hours 89% of pursuable complaints completed within 12 months 504 persons prosecuted on corruption and related offenses (32% increase over 1998, up from 300+ on avg. 1974-1984) 302 Convictions (up 15% from 1998), for a success rate of 60%	106 detailed studies of government practices and procedures 260 requests from private firms for free corruption prevention advice 100% of requesters of advice/training on corruption prevention contacted within 48 hours
MALAYSIA ACA (1999)	413 investigations 213 cases outstanding from 1998 360 prosecutions begun in 1999 283 arrests, including 18 senior officials, 127 private persons 152 prosecutions completed 89 convictions, 56 acquittals	

PHILIPPINES OMBUDSMAN (2000)	9,739 new cases 2,209 cases filed for prosecution with the courts 514 cases in which penalties were imposed on government official or employees	10,583 requests for preventive assistance received attention
TANZANIA PCB (2000)	1,128 complaints under investigation 1,461 cases 328 complaints under investigation closed 1,311 public complaints received 88 private complaints received 94 prosecutions (1995-2000)	12 public meetings 225 seminars 157 radio programs 48,000 brochures and leaflets
UGANDA IGG (1997-1998)	98 or 7% of cases investigated and completed 1,428 complaints received 420 cases referred to other government departments	

Intelligence, monitoring, and investigation: In this area, the data are not uniform. Some countries report the numbers of investigations started, i.e. Argentina, Botswana, and Tanzania. Others, such as NSW, Ecuador, Malaysia, and Uganda, report completed investigations in various ways. It is hard to make sense of these data. Numbers of completed investigations seem more meaningful than numbers of investigations started – but neither speaks to the quality of the effort, nor the outcomes.

Prosecutions and administrative orders: Here again, the reporting is disparate. Some agencies report overall numbers, while others report actions taken by prosecutors and administrative supervisors, and a few report both – i.e. Argentina, NSW, Ecuador, Hong Kong, Malaysia, Tanzania, and the Philippines. The Philippines far exceeds the other countries in prosecutions, but there is a problem of comparability, since its ACA is the only one with authority to prosecute on its own. New South Wales reported only 10 prosecutions, but this is a result of its narrow focus. Numbers and percentages of convictions are perhaps more telling, for the few that report them: Hong Kong (60% success rate), Malaysia (25%), the Philippines (23%). By this measure, Hong Kong is by far the most successful. Again, the numbers do not convey the quality of the proceedings, the quality of the complaints, nor the harshness or deterrent effect of the penalties imposed.

Preventive research, analysis, and technical assistance: Only a few ACAs report results in this area: NSW, Hong Kong, and the Philippines. These numbers are not comparable, since they do not indicate the scope of the assistance activities counted. The most telling number is perhaps NSW's 56% success rate in having its recommendations fully implemented.

Ethics policy guidance, compliance review, and scrutiny of asset declarations: Most of the ACAs covered here do not process asset declarations. Of these, only Argentina reported on this (a near-perfect compliance rate).

Public information, education, and outreach: Here too, there was little reporting. Numbers are published by NSW, Botswana, and Tanzania.

Some caveats are in order here. First, these data are self-reported and are often, but not always, reviewed and verified independently. Second, the data are often incomplete, inconsistent, or untrustworthy. Not all of the basic outputs are measured, and it is not easy to determine the consistency, for example, of prosecutions with procedural protections and non-partisanship. Moreover, even complete measures on ACAs will eventually need to be supplemented with intermediate outcome data, which are frequently unavailable. Third, data comparisons themselves cannot conclusively demonstrate that results achieved by ACAs could not have been achieved through multi-agency cooperation in the absence of an ACA. Qualitative analysis, on the other hand, can show the extent to which an ACA has overcome coordination, information, and leadership constraints that a different approach or agency might not have

ENDNOTES

- ¹ United Nations. 2002. *United Nations Convention against Corruption*. Chapter 2, Article 6. http://www.unodc.org/pdf/crime/convention_corruption/signing/Convention-e.pdf
- ² Johnston, Michael. 2002. "Independent Anti-Corruption Commissions: Success Stories and Cautionary Tales." Global Forum on Fighting Corruption and Safeguarding Integrity, The Hague: Memo, 4.
- ³ Doig, Alan. May 1995. "Good Government and Sustainable Anti-Corruption Strategies: A Role for Independent Anti-Corruption Agencies?" *Public Administration and Development*. Pope, Jeremy. August 1999. "The Need for, and Role of, an Independent Anti-Corruption Agency." Transparency International. Camerer, Lala. 1999. "Tackling the Multi-Headed Dragon: Evaluating prospects for a single anti-corruption agency in South Africa." 9th International Anti-Corruption Conference. Langseth, Petter. 2001. "Anti-corruption Agencies," Experts Meeting, National Integrity Steering Committee (NISC). January 22. Transparency International. 2000. "Chapter 11: Independent Anti-Corruption Agencies." *TI Source Book 2000*.
- ⁴ New South Wales Independent Commission Against Corruption. 2001. *Annual Report 2000/01*. Sydney. p.23.
- ⁵ Ah Leak, Tan. 1999. "The Experience of Singapore in Combating Corruption." In Stapenhurst and Kpundeh. 1999. In Anechiarico, Frank and Jacobs, James B. 1996. *The Pursuit of Absolute Integrity*. Chicago. The University of Chicago Press.
- ⁶ Pope 1999.
- ⁷ Speville, Bertrand de. 1997. Hong Kong: Policy Initiatives against Corruption. Development Centre of OECD.
- ⁸ Kaufmann, Daniel. 1998. "Revisiting Anti-Corruption Strategies: Tilt Towards Incentive-Driven Approaches," *Corruption & Integrity Improvement Initiatives in Developing Countries*, UNDP.
- ⁹ USAID's Office of Democracy and Governance is developing an Anticorruption Assessment Methodology to assist Missions to develop better understanding of the dynamics of corruption on which to base program design and implementation strategies.
- ¹⁰ Gillespie, Kate and Gwenn Okruhlik. October 1991. The Political Dimensions of Corruption Cleanups: A Framework for Analysis, *Comparative Politics* 24. This perspective examined the politics of corruption cleanups in some developing regions. These cleanups include legal measures such as the establishment of ACAs. The analysis focuses on the impact of the political context – continuation of incumbent leadership versus change as a result of election, coup, or revolution – on the quality of the cleanup.
- ¹¹ Maor, Moshe. January 2004. "Feeling the Heat? Anticorruption Mechanisms in Comparative Perspective." *Governance*. Vol. 17. No.1, pp. 1-28.
- ¹² Doig, Alan, David Watt, and Robert Williams. 2005. "Measuring 'Success' in 5 African Anticorruption Commissions [ACCs]: Ghana, Malawi, Tanzania, Uganda, Zambia," Draft Final Report, http://www.u4.no/document/research_reports.cfm
- ¹³ Williams, Robert (2000), "Democracy, Development and Anti-Corruption Strategies: Learning from the Australian Experience," in Doig and Theobald, ed. *Corruption and Democratisation*. London: Frank Cass and Company Limited. Williams raises the following concerns: "An epidemic of corruption scandals often induces moral panic and over-reaction. In such contexts, corruption commissioners can almost seem to act as modern witchfinder-generals, playing on popular fears and asserting guilt where there was once a presumption of innocence.....They encourage a climate of suspicion and distrust, thus undermining confidence and public trust in public figures and the wider political system."

¹⁴ USAID, 2005. "Assistance for Civilian Policing: Policy Guidance". http://pdf.usaid.gov/pdf_docs/PDACG022.pdf

¹⁵ The Inspector General Act of 1978 established Offices of Inspector General within a number of executive branch departments and agencies. The Inspectors General were given a significant degree of independence as well as subpoena power to carry out their responsibility for the detection and prevention of fraud, waste and mismanagement in government programs.

¹⁶ The influence of Watergate was clearly felt in the passage of the Ethics in Government Act of 1978. This Act established the Office of Government Ethics within the Office of Personnel Management and charged it with providing overall leadership and direction for the ethics program within the executive branch. It established a comprehensive public financial disclosure system for all three branches of the federal government. It also enacted procedures for the appointment of a special prosecutor with authority to conduct independent investigations and prosecutions of government officials and thereby remove politics from the administration of justice in certain highly sensitive cases. The 1978 Act strengthened the post-employment restrictions on former officials of the executive branch.

¹⁷ Meagher, P. 2004. "Anti-Corruption Agencies: A Review of Experience," revised paper submitted to the World Bank, PREM-ECA.

¹⁸ Speville 1997. Camerer 1999.

¹⁹ Doig, et al. 2005. Meagher 2004. Meagher, Patrick. 2005. "Anti-Corruption Agencies: Rhetoric versus Reality," *The Journal of Policy Reform*, vol. 8, no. 1, New York: Routledge.

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WEB RESOURCES

Development Gateway

<http://topics.developmentgateway.org/governance>

Governance Resource Center

<http://www.gsdr.org>

U4 Anticorruption Resource Center

<http://www.u4.no/>

World Bank Institute

<http://www.worldbank.org/wbi/governanc/library.html>

World Bank/Poverty Reduction and Economic Management Group

<http://www.worldbank.org/publicsector/anticorrupt/index.cfm>

Center for Institutional Reform and the Informal Sector (IRIS)

www.iris.umd.edu

Prime Holders of USAID Governmental Integrity IQC

(For more information see DG Office User's Guide at)

http://www.usaid.gov/our_work/democracy_and_governance/publications/pdfs/ug.pdf

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www.dpkconsulting.com

Management Systems International (MSI)

www.msiworldwide.com

Planning and Development Collaborative International (PADCO)

www.padco.aecom.com