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Supporting Anti-Corruption Reform in Partner Countries

Concepts, Tools and Areas for Action

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October 2011

EUROPEAN
COMMISSION

Concept Paper N° 2

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INTRODUCTION

The body of evidence collected over the last two decades by policy-makers, institutions, non-state actors and academics, demonstrates that corruption serves as a major impediment to development. Strong evidence suggests that resources intended to address the basic development needs of millions of poor people around the world are diverted and misallocated through various forms of corrupt practices. Tentative estimates suggest bribery alone costs the global economy US $1 trillion every year[1], and it is widely believed that if corruption is not reduced, most developing countries will not achieve the Millennium Development Goals (MDGs).

Donors are, however, becoming increasingly aware of the complex relationship between corruption and development. Not only can the efforts of donors to tackle poverty in partner countries be undermined by corruption, but the subversion of official development assistance (ODA) represents a reputational risk for donor countries. With an increasing appreciation of the risks to both developmental progress and donor reputation, donors are taking measures to more carefully assess the problem before incorporating the analyses into their activities at both the programmatic and sectoral level.

The scale of the costs associated with corruption is also of particular relevance considering the current global financial crisis. With concerns over the imposition of painful fiscal reforms and an 'age of austerity' in many Western societies, Western governments are likely to face considerable pressure from their citizens to also reduce aid expenditure. More pointedly, the dual pressures of fiscal discipline and public pressure are likely to result in increased scrutiny of the ways in which development aid is used and, importantly, where it has been misappropriated or subverted. However, such increased attention on the problems caused by corruption also offers donors an opportunity—and a willing global constituency—to re-focus efforts on a phenomenon that represents a major challenge to realising the MDGs.

Corruption is understood as a symptom of dysfunctional governance. A great deal of the work undertaken by the European Commission through its external aid programmes in partner countries has focused on increasing the capacity of the state, but also NGOs and other non-state actors, in order to ensure improved levels of accountability and transparency, while also taking into consideration specific local conditions in the partner countries. Specifically, these efforts have centred upon supporting the rule of law, democratisation, public administration reform, public finance management, decentralisation and building the capacity of non-state actors.

While donors clearly have a role to play, this concept paper emphasises that, in line with the 2005 Paris Declaration[2], the fight against corruption cannot rely solely on donor initiative. A shared consensus between partner countries, policy-makers and academics suggests that such a unilateral approach would be doomed to failure. In short, rather than trying to reinforce local anti-corruption efforts at the same time as supporting international anti-corruption initiatives, donors should instead be aiming to situate themselves in a position from which they are able to provide the necessary analysis and support required by partner countries in their own anti-corruption efforts.

The main objective of this paper is to provide relevant insights on the current thinking on and around anti-corruption in developing countries in order to enable the EU staff (relevant staff at the Commission, EEAS and in EU Delegations) to achieve the following:
- Acquire useful tools to analyse corruption in a given local setting;
- Become better equipped to support the implementation of anti-corruption strategies and policies; and
- Better identify relevant anti-corruption measures so as to better mainstreaming anti-corruption issues in EU development assistance.

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1   World Bank Institute, 2004. 'The Costs of Corruption', available at http://go.worldbank.org/LJA29GHA80.

2   The Paris Declaration commited countries to work towards enhanced aid effectiveness by improving ownership, alignment, harmonisation, results and mutual accountability. See http://www.oecd.org/document/18/0,3343,en_2649_3236398_35401554_1_1_1_1,00.html for more detail.

This concept paper focuses upon three main sections:

- **Chapter One** introduces the main concepts relating to corruption; namely, an overview of the various definitions, forms and typologies of corruption; the causes and consequences of corruption; and the importance of the specific country context. This is intended to provide the EU staff and other interested stakeholders with an introductory tool to assist in the appreciation of current understandings of corruption.

- **Chapter** Two seeks to situate corruption within a global context. This section examines the global drivers of corruption and anti-corruption, including conventions and other international instruments. It also provides a case study looking at the field of natural resources management to demonstrate how corruption can be fought indirectly as well as directly.

- **Chapter Three** is more operational in its approach than the first two chapters. It seeks to introduce EU staff to the frameworks and tools available to analyse and assess levels and perceptions of corruption and the challenges posed by this process. It also includes suggested steps for undertaking corruption analysis using cutting edge analysis tools. In keeping with the aims of the Concept Note overall, its main purpose is to provide readers with a deeper understanding of relevant issues related to measuring corruption and assessing anti-corruption in order to help improve the policy-making process.

This concept paper therefore aims to help EU staff understand the complexities of corruption and the various approaches most often taken in fighting it. Given the significant concern over corruption within various sectors of the EU development assistance, it has been developed to better inform all EU staff—but most particularly those working on governance—of the current issues, thinking and research concerning corruption and anti-corruption. It has been designed in a way that enables readers to dip in and out as needed, but it is strongly recommended that it is read in order if possible. As Chapter One makes clear, for example, it is impossible to analyse the country context using political economy analysis (PEA) if a basic understanding of what constitutes corruption in different contexts is not shared.

This concept note does not attempt to provide a general or broad-spectrum remedy for corruption; rather it is intended to enhance the understanding of EU staff, providing them with the analytical and assessment frameworks that will help them implement context-specific anti-corruption activities. There is indeed no 'one size fits all' process for dealing with corruption; appropriate solutions must always be grounded in local, context-specific understanding.

CHAPTER ONE: MAIN CONCEPTS

Section 1: Definitions, typologies and forms of corruption

Key points:

- Socio-economic definitions/incidental definitions emphasise an individual pursuing corrupt practices for personal gain.
- Anthropological definitions/systemic definitions emphasise a context-specific understanding of corruption.
- Corruption is not exclusive to any one definition or typology—understanding corruption requires a multi-disciplinary approach.

Definitions of corruption vary according to the approaches, aims and needs of policy-makers. The legal approach, for example, requires accurate, explicit and definitive recognition of corrupt offences in order to construct legal frameworks that inform individuals, states and the international community of what constitutes prohibited acts. Socio-economic approaches tend to focus on the behaviour and economic interactions of the individual and their decision-making, while anthropological approaches are more analytical, nuanced and focus upon social systems.

An understanding of the central tenets of each of these approaches by policy-makers will further develop understandings of corruption. The following sections aim to make EU staff aware of the different approaches to defining corruption and to better understand the different types of definitions used. When jointly applied, the following legal, socio-economic and anthropological approaches will provide EU staff with the necessary tools with which to develop a nuanced understanding of corruption. Thus, it is of vital importance that these approaches be recognised as complementary and useful in understanding and analysing the phenomenon, rather than used for comparison and judgements.

Box 1: Nigerian definitions of corruption

'In Nigeria when Nigerians talk about corruption, they refer not only to the abuse of state offices for some kind of private gain but also to a whole range of social behaviour in which various forms of morally questionable deception that enable the achievement of wealth, power or prestige as well as more mundane ambitions. Nigerian notions of corruption encompass everything from government bribery and graft, rigged elections, and fraudulent business deals, to the diabolical abuse of occult powers, medical quackery, cheating in school, and even deceiving a lover'.

Source: D.J. Smith, 2007. A Culture of Corruption:
Everyday Deception & Popular Discontent in Nigeria, Princeton University, p.5

1.1 Defining corruption

Defining corruption is a complex task. Even if corruption is a worldwide phenomenon and presents common features in all countries, corruption also remains well entrenched in national contexts and local cultures, fundamentally dependent on the context-specific interaction between local actors. Far from a question of semantics or academic posturing, how corruption is defined affects how it is viewed, which policy approaches are adopted and which approaches are deemed to be legitimate.

1.1.1 Main features of the legal approach to defining corruption

Defining corruption from a legal point of view is complex due to the complexity of the notion of corruption itself, which is dependent on time and place and may vary in different societies.
Respectively, the scope and content of national legislation and international conventions[3] on corruption vary. In general, they contain a definition of the various forms of corruption, sanctions, specific provisions for the investigation and prosecution as well as enforcing provisions.

Traditionally, corruption is defined in legal terms in criminal law Criminal law penalises acts or omissions which a given state or community considers as particularly harmful to personal rights or societal interests. In accordance with the fundamental principles of criminal law, namely that criminal liability is personal liability and that criminal law provisions shall be sufficiently clear and precise to dictate the sanctions (nullum crimen nulla poena sine lege), the respective definition of corruption under criminal laws are relatively detailed and focused on individual behaviour. Such definitions address in particular active and passive bribery, but also a range of other criminal practices related to corruption, such as the abuse of public position and favouritism.

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3   For a presentation on relevant international conventions, see chapter 2, section 1.

Further, criminal law was considered as the exclusive realm of national sovereignty. Due to the diversity of social and cultural norms, as well as historical and legal traditions, the legal definitions for corruption-related offences in the respective national criminal codes were also diverse, which in turn resulted in a lack of effective and equivalent protection against international corruption and organised crime. Furthermore, the international judicial cooperation against corruption, regarding for instance mutual legal assistance or extradition, was often compromised by the principle of 'dual criminality', whereby inter-state legal cooperation will be refused for acts alleged as crimes if they are not also defined as crimes in the jurisdiction receiving the request for assistance

This led to the negotiation and adoption of international conventions against corruption, aiming in particular to ensure that acts that are regarded as amounting to corruption are defined as such in a more harmonised and effective manner, as well as facilitating international judicial cooperation. In essence, States Parties to such conventions must transpose the acts defined as corruption into their national criminal legislation. For instance, as to the bribery of national public officials, the United Nations Convention Against Corruption (UNCAC) provides that:

"Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;

(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties." [4]

International anti-corruption conventions were often also at the origin of national anti-corruption legislation developed in recent years which goes beyond provisions criminalising active and passive forms of bribery, notably as to cover issues such as access to information, conflict of interests, whistleblower protection, procurement, anti-money laundering regulations and freedom of expression. Such legislation also provides a framework for a broad range of prevention measures[5] and enforcement aspects, and in some cases, for the establishment of special anti-corruption agencies.

The main features of defining corruption in legal terms are the following:

The act of corruption

- is illegal and illegitimate; acts considered as «corruption» are sanctioned by law. They are illegitimate in the sense that there is a violation of the prevailing values in a democratic society, thus constituting the basis for sanctions;
- is an act of power, which implies abuse of power in favour of particular interests in exchange of a reward, promise or an abuse of public functions;
- covers both action and omission;
- involves a conflict of interest. Corruption violates the public/general interest or a private entity's interest and implies an advantage (economic gain, status, honours, awards, reward or favours) to oneself or others (family, friends, group or organisation);
- implies the violation of fundamental principles, values and rights in a democratic society, such as the principle of legality, good faith, transparency, accountability and human rights.

The types of sanctions range from civil to criminal, including also administrative, disciplinary rules, in various legal instruments.

1.1.2 Main features of socio-economic approaches to defining corruption

Socio-economic definitions came to the fore during a period popularly termed the 'corruption eruption' (Naim, 1995), where increased attention to the subject attempted to transcend the inherent limits of an approach based purely on criminal law definitions. In appreciating the role of the individual, and their place within society, socio-economic approaches, such as that of the widely popular 'principal-agent' model (see Box 2 below), consider corruption to be the result of individual rational decisions and examine the interplay between motivation, power and opportunity in an attempt to understand why individuals choose to engage in corrupt behaviour.

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4   *Article 15 of the convention.*

5   *For example, public officials are required to disclose their income and assets, or are subject to certain incompatibilities.*

> **Box 2: Principal-agent theory and public sector corruption**
>
> The high profile of principal-agent theory as one of the most popular and most frequently cited theories of the 'individualist' paradigm means the model requires some further explanation here. Principal-agent theory suggests that public sector corruption is the result of a corrupt transaction between three individuals: the principal (either the governing entity or, in some models, the state's citizenry as a whole); the agent (a corruptible individual whose work and duty is in the service of the principal); and a third party (the corrupter). The agent is expected to act on behalf of the principal and to advance their interests; however, the agent and the principal may in reality be pursuing different, even antagonistic goals, given the asymmetric access to information between them.

In emphasising the potential benefits available to an individual operating within public office, the World Bank's definition of corruption, 'the abuse of public office for private gain'[6], is the most commonly used and cited.
This definition does not limit corruption to illegitimate pecuniary transactions, such as bribery, but also extends it to non-monetary advantage, such as nepotism or influence peddling. Moreover, it does not strictly refer to corruption but also to other abuses of public offices.

The UNDP proposes a more comprehensive and explicit interpretation of corruption, defining it as, 'The misuse of public power, office or authority for private benefit—through bribery, extortion, influence peddling, nepotism, fraud, speed money or embezzlement'[7]. The UNDP's definition clearly goes further than the World Bank's, establishing as it does the various acts that are believed to actually constitute corruption.

In applying an institutional context to socio-economic pursuits, academics, such as Klitgaard (1988), have directed the corruption vocabulary further towards the economic sphere, entrenching it firmly within notions of law and government. Such interpretation unsurprisingly sees the workings of government through an 'economic prism'[8], deeming its very existence analogous to private sector interests. The impact of such thinking has been clear, and Klitgaard's now famous formula (see Box 3 below) has been considerably influential in designing far-reaching public sector reforms to address corruption.

> **Box 3: Klitgaard's formula highlights the relationship between the monopoly of power/government and the discretion of officials and corruption itself:**
>
> Corruption = Monopoly + Discretion – Accountability (C=M+D-A)
>
> *Source: R. Klitgaard, 1988. Controlling Corruption, University of California Press.*

A broad consensus among academics and institutions focuses on corruption as limited to the public sector, and these definitions also enable us to recognise notions of entrusted power, entrusted authority and illicit gain. An appreciation of these broader understandings of corruption is important to policy-makers in order to gain a more thorough introduction to definitions of the phenomenon.

Since large corrupt transactions may not always involve public office, 'The misuse of entrusted power for private gain' is an interpretation offered by Transparency International[9]. The focus on 'entrusted power' can be seen to refer to any form of legitimate formal authority, and therefore no longer limits corruption to the public sector alone.

In a similar vein, Norad continues the theme of an abuse of 'trust' with its definition of corruption as, 'The abuse of entrusted authority for illicit gain'[10]. Norad's definition however shifts focus towards the 'illicit' nature of corrupt transactions whether private or otherwise. Some mainstream interpretations, as we have seen, tend to limit their scope to more formal manifestations of public authority when defining corruption and tend to neglect informal institutions or modes of power. Institutions that offer broader definitions argue that corruption can also be seen as a deviation from customs and social norms, and that definitions therefore should encompass informal as well as formal forms of power[11]. The term 'entrusted authority' attempts to recognise a spectrum of power ranging from the formal to the informal, thus covering the spectrum from individual to systemic corruption in neo-patrimonial states. Norad's use of the word 'illicit', offers a greater degree of conceptual freedom here, including, as it does, unlawful acts, but also ones that may be legal

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6   World Bank, 1997. 'Helping Countries Combat Corruption: The Role of the World Bank, Washington DC',
     available at http://www1.worldbank.org/publicsector/anticorrupt/corruptn/corrptn.pdf
7   UNDP, 1998. 'Fighting Corruption to Improve Governance'.
8   Williams, R., 1999. 'New Concepts for Old?', Third World Quarterly, 20(3): 503-513
9   See http://www.transparency.org/news_room/faq/corruption_faq.
10   Norad, 2008. 'Anti-Corruption Approaches, a Literature Review'. Evaluation Department.
11   Andvig, J., 2006. 'Corruption and Fast Change', World Development, 34(2): 328-40.

yet disapproved of on moral or ethical grounds. This suggests that corruption may also arise when transactions are in contradiction with entrenched informal rules and customs.

Perhaps the broadest attempt to define corruption under a socio-economic approach comes from the EU. In addition to the specific legal definitions of corruption-related offences provided by the 1995 EU Convention and its protocols on the protection of European Communities' financial interests, as well as by the 1997 EU Convention on Anticorruption, the 2003 European Commission Communication adopts the UN's interpretation of corruption as 'the abuse of power for private gain'[12]. In doing so, the Communication both re-emphasised central tenets of previously mentioned understandings, while also going further in recognising the 'supply side': the role of the private sector and the support of necessary efforts to improve integrity and corporate social responsibility. It is important to note that this definition arises from European Commission Communication, which is a policy-making tool, and thus is not a definition approved at the EU level with a specific legal basis.

What socio-economic approaches to defining corruption do not do is to provide adequate recognition of the cultural, moral and behavioural effects on corruption. Thus an anthropological understanding of the systems, habits and customs underlying corruption in any given society may provide us with greater insight and enriched understanding.

1.1.3 Anthropological approaches to defining corruption

The anthropological approach to defining corruption focuses on the motivations, organization of power and the contexts where corruption takes place. It considers corruption as a cultural, moral and legal phenomenon, emphasizing the roles played by norms, rules, customs and perceptions of corruption within a given society. Policy documents tend to focus on legal or socio-economic approaches to corruption, but there is much to learn from anthropological approaches, in terms of programmatic design, policy dialogue and so on.

Anthropological studies on corruption emphasise that corruption is both a product of individual interactions and the systems in which they interact. Social attitudes, the forms and organisation of power and particular arrangements of formal and informal rules, may all participate in the formation of systems (such as neo-patrimonial systems) where corruption and state-capture may flourish. Corruption is therefore a phenomenon that changes across time and societies and which needs to be treated contextually. This does not automatically mean that corruption can be viewed as a relativistic concept considered as acceptable within certain cultures but not in others. Indeed, corruption is condemned widely all around the world regardless of the culture within which it occurs, but what is actually understood to be corrupt may change depending on context.

In one highly influential study[13], researchers have analysed the 'real' rules and procedures that govern informal and formal economic and legal behaviour in developing countries. They studied petty and institutional forms of corruption in transport and customs, the legal system and in public procurement, arguing that 'corruption must be understood as a practice embedded in everyday forms of sociability that transcend normative concepts of illegality and illegitimacy'. According to their findings, corruption was found to be pervasive throughout everyday life in the countries where they carried out their research. They hypothesised that the communal complicity of different actors who commit corrupt acts, served as a means of coping with an environment where public services are confused and dysfunctional.

Similarly, in many countries the public tolerates corruption in public administration and pays bribes even when civil servants do not ask for them. The public sees corruption as a way for poorly paid civil servants to survive[14]. Furthermore, researchers have argued that in some cases, corruption is a matter of professional necessity. Indeed, in an environment where corruption is so pervasive, an individual who does not engage in corruption is dismissed as a fool. The behaviour of such a person may even be considered selfish since he or she does not take advantage of his or her position to collect bribes that could be shared among kin or colleagues[15]. In many countries people are recruited on condition that they actively seek bribes and share the proceeds with the individuals who recruited them[16].

Another study analyses everyday perceptions of and attitudes towards the phenomenon in a number of societies. For people in the countries they investigated corruption was perceived as just another public service—a public resource that anybody can use when they are in a position to do so. They observed an ambivalent attitude toward corruption where, instead of being condemned outright, is judged according to a scale of acceptance that operates in the society: 'while a good appetite is normal', it was opined, 'gluttony is deplorable'. This 'moral economy of corruption', which according

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12   From Communication on Corruption [COM(2003)317]: 'The Communication adopts the definition of corruption used by the United Nations' Global Programme against Corruption, i.e. «abuse of power for private gain»', available at http://europa.eu/legislation_summaries/fight_against_fraud/fight_against_corruption/l33301_en.htm

13   Blundo, G. et al., 2006. Everyday Corruption and the State: Citizens and Public Officials in Africa, London: Zed Books.

14   Kodi, M., 2008. 'Corruption and Governance in the DRC During the Transition Period (2003-6)', Pretoria: ISS, available at http://www.ipocafrica.org/index.php?option=com_content&view=article&id=56&Itemid=86

15   Blundo, et al., 2006

16   Kodi, 2008.

to researchers governs and regulates the ethical construction of corruption in the countries investigated, is also found in other developing countries[17].

In a study of religion and attitudes towards corruption in Nigeria, Marquette et al. show how corruption was seen by respondents as being a 'catch-all' phrase for all that is considered to be bad or evil in society[18]. This includes bribery and fraud, but – echoing the quote from Smith in Box 1 (above) – it also includes things such as adultery and homosexuality. This shows very clearly the need for policymakers to recognise the difference that definitions can make to policy-making. Indeed, in the Times of Zambia, Vice-President Mumba 'encouraged the church to stand out against "unbiblical practices"'; the title of the story is 'Zambia gets '"tough on corruption and gays"'[19]. If external actors were to enlist religious leaders into the fight against corruption, for example, they could conceivably find themselves embroiled on the wrong side of debates about human rights in their own countries if they are not aware of these definitional differences.

The anthropological approach points out that when defining and combating corruption, 'one size does not fit all', and it is important for policy-makers and analysts to take into account the issues raised through anthropological analysis when approaching corruption.

1.2 Typologies of corruption

This section explores the forms and typologies of corruption to be addressed throughout this paper before shedding some light on the scale of corrupt acts, their context and the motivation of involved parties.

1.2.1 Grand versus petty corruption

Grand corruption is largely attributed to poor accountability and transparency and generally pervades the highest levels of national government. This permutation is often found in specific sectors where transactions present the following characteristics:

- Large transactions, where a large margin can be received with minimal risk from a minimum number of transactions;
- An immediacy of reward, and a prevalence of short time horizons for public sector elites, increases the opportunity cost of receiving bribes with lower margins over a longer time period;
- Complex and sophisticated corrupt transactions are attractive since they lower the probability of getting caught.

When applying these criteria, grand corruption is seen to occur most frequently in areas such as construction, telecommunications, the extractive industries, and defence contracts, large infrastructure contracts in health and water sectors and in contracting technical expertise.

While grand corruption tends to monopolise the media, and despite the relatively small proportion of grand corruption cases that are ever reported, it is petty corruption that generally translates into a more discrete, lower level, daily obstacle that affects the poor directly and disproportionately. Although often only involving relatively small amounts of money—certainly in comparison with grand corruption cases—petty corruption can be just as damaging, since it directly affects the welfare of citizens and the business environment. Petty corruption occurs at the citizen-state level of interface, where citizens seek to evade restricting regulations or when officials abuse their discretionary power by extorting money from them. Transparency International's worldwide survey (2009) suggests that forty per cent of respondents reported having spent between one and ten per cent of their annual income on bribes.

Experiences of petty corruption tend to occur when people interact with the following sectors and public services: customs, taxation, police, judiciary, land services, registry and permit services, health, education and utilities (water and electricity). These sectors witness a high prevalence as they are regularly solicited by the population, giving officials important monopoly and discretionary powers at point of access to public goods and services.

Petty corruption is also a major factor of economic discrimination since it tends to affect the poorest the most. Transparency International's 2009 worldwide survey across services most prone to bribery shows that the level of respondents reported having bribed a public official in the previous twelve months is far higher in the poorest quintile than in the richest twenty-five per cent of the lowest income quintile, while only fifteen per cent of the highest income quintile responded that they did.

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17   Blundo, G. & Olivier de Sardan, J.P., 2001. 'Sémiologie populaire de la corruption', Politique africaine, 83.

18   Marquette, H. et al., 2012 (forthcoming), 'Religion and Attitudes Towards Corruption in India and Nigeria', Development in Practice.

19   Times of Zambia, 2003, Zambia Gets 'Tough on Corruption and Gays'. Times of Zambia, 17 November.

Figure 1: Percentage of people who reported paying bribes in the previous 12 months, arranged by service

Service	Higher income quintile	Lower income quintile
Police	15	25
Judiciary	10	17
Land Services	9	14
Registry & Permit Services	8	10
Education Services	6	11
Medical Services	9	9
Tax Revenue	4	5
Utilities	4	5

● Higher income quintile
● Lower income quintile

% of respondents who reported paying a bribe in the previous 12 months
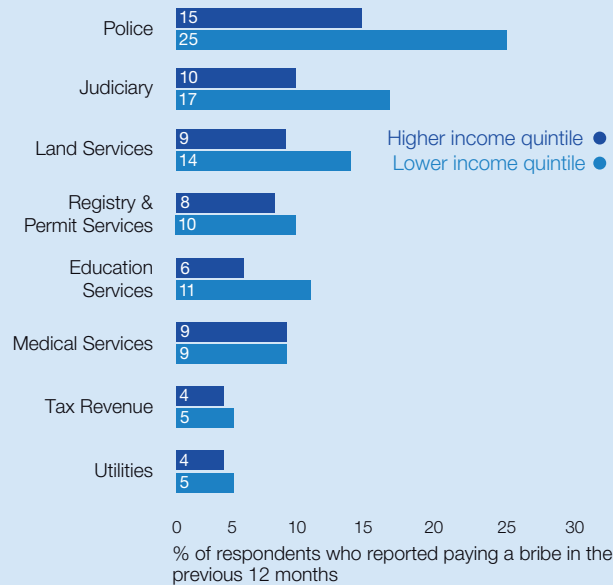
Source: Transparency International, 2009. Global Corruption Barometer, available at http://www.transparency.org/news_room/in_focus/2009/gcb2009#dnld.

1.2.2 Bureaucratic/administrative versus political corruption and state capture

Bureaucratic/administrative corruption concerns relatively small-scale, petty corruption where the implementation of policies at the point of citizen access is altered by non-elected public officials, through practices such as bribery to get a licence or evade taxation. Corruption between a low-level public agent (the agent) and a third party is facilitated through an information asymmetry between benevolent politicians or decision-makers (the principal) and their subordinates (also the agent). As a result, the principal cannot observe the misbehaviours of agents, providing opportunities to the latter to indulge in corrupt behaviour.

Such a theory, however, is less able to explain political corruption (i.e. the misuse of entrusted power by political leaders to manipulate policies, institutions and rules of procedure)[20]; nor can it explain state capture where 'the state itself can be characterized as largely serving the interests of a narrow group of business people and politicians'[21].

These terms have arisen from a recent stream of literature concerning the economics of crime and appropriation, the economics of organised crime and the political economy of dictatorship—approaches that seek to emphasise that corruption is far from exogenous to the political process. Analyses such as these consider the consequences of predatory behaviour consisting largely of rent-seeking by both ruler (politician or decision-maker) and outside groups. In this context, political corruption and state capture occur 'when [high level officials and other] groups are able to influence/exploit the rules and regulations set by the state in ways that allow them to extract undue economic and/or political benefits'[22].

State capture tends to occur most frequently in neo-patrimonial systems, which are hybrid systems of governance where a patrimonial system of governance co-exists with formal rational-legal institutions. The weak separation of public and private spheres favours the use of public resources for personal or collective gains (corruption) and other related practices. These relationships combined with weak separation of public and private spheres leads to systemic clientelism.

Since competition for power among political elites amounts to a zero-sum game, and the misappropriation to public resources forms the only means of accumulating wealth, political elites fight for positions of power, often using state resources to maintain their positions in society and redistribute wealth to their clients. For the latter, this relationship is essential since it provides access to resources that the state—because of its dysfunctional institutions—is not able to deliver.

20 See http://www.transparency.org/news_room/faq/corruption_faq

21 Rose-Ackerman, S., 2004. 'The Challenge of Poor Governance and Corruption', available at http://www. copenhagenconsensus.com/files/filer/cc/papers/governance_and_corruption_300404_(0.7mb_version).pdf

22 Norad, 2008.

1.2.3 Active versus passive corruption

Distinctions between 'passive' and 'active' forms of corruption occur frequently within various national legislature and international conventions and reflect the need under criminal law to precisely define the personal behaviours that are prohibited. These terms apply in particular to incidents of corruption that involve a 'transaction' (e.g. bribery). In this instance, active corruption refers to the individual/organisation that funds the transaction act (i.e. a bribe is offered/paid [the 'supply side']), while passive corruption refers to the receipt of proceeds from the act by the public official (i.e. accepting the bribe [the 'demand side'])[23].

This distinction is of course not to be misunderstood with regards to the briber always being cast as 'active' and the bribed person as 'passive'. It can of course be the case that the person receiving the bribe takes the initiative of requesting the bribe.

1.2.4 Corruption driven by need versus corruption driven by greed

The distinction between 'need' and 'greed' refers to the motivations underlying corruption (i.e. 'corruption driven by need' in contrast with 'corruption driven by greed'). While the distinction is not recognised in the academic literature, it was emphasised by the Tanzanian 'Presidential Commission of Enquiry into Corruption', commonly known as the Warioba Commission. The Commission deemed that corruption motivated by need refers to petty corruption and is seen as a means for public servants to supplement their often meagre incomes. Conversely, grand corruption is usually motivated by 'greed' for the accumulation of vast wealth rather than survival.

This distinction has led to a debate regarding the salary levels of public sector officials in developing countries, where higher-level salaries in the public sector are expected to diminish incentives for corrupt acts. In the same way, political stability is supposed to decrease corruption by lengthening the time horizons over which an honest official could expect to enjoy high remuneration and an extended career.

However, the relationship between work environment and corruption is perhaps more nuanced. Indeed, it may also be argued that high salaries themselves contribute to intensifying competition for positions in public administration and subsequently create favourable conditions for bribery. Similarly, political stability can contribute to reinforcing both clandestine relationships between corrupted public and private actors, as well as their reputation for such behaviour, by providing conditions conducive to a high frequency of transactions[24]. Thus, high public salaries and political stability may in certain situations have an indeterminate and unpredictable impact on preventing or lowering the levels of corruption.

1.2.5 Incidental versus systemic corruption

'Incidental' or 'systemic' designations do not in any way indicate the scale or degree of corruption in a given society but rather provide differing theoretical imperatives as to how corruption may be understood to occur—who is ultimately responsible, and what methods may be most appropriate to fight it.

Incidental corruption does refer to corruption that is an occasional occurrence and which does not seem to imply corruption that is particularly widespread. However, in a more theoretical sense, it is also used to explore the importance of individual agency and the notion that individual acts are determined by 'rational choice', and not by a more pervasive, 'systematised' form of corruption. Emphasis on individual responsibility leads to advocating action that focuses on monitoring and punishing the individual perpetrator as the 'source' of corruption. This does, however, raise questions regarding the degree of independence individuals truly have within any given society, and this allows insight into the limitations of 'principal-agent' models.

Systemic corruption, conversely, implies corruption that is so widespread that it is almost 'built into' the system. Again, in a more theoretical sense, it is also used to suggest that rather than acting independently, actors actually operate as part of a system, co-ordinated to maximise the collection and distribution of rents. Systems of corruption therefore involve the sale of jobs, the sharing of rents from bribery or theft and the compromising of systems of integrity that could control corruption[25]. As opposed to emphasising the role of individual agency as fundamental to the causes, continuation and remedy of corruption, understanding corruption as a systemic problem results in a greater focus on the wider mechanisms that compound it. From a systemic perspective, action that pre-empts corrupt behaviour and mitigates its effects is advocated.

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23   UNODC, 2004. 'UN Anti-Corruption Toolkit', Vienna, available at http://www.unodc.org/documents/corruption/publications_toolkit_sep04.pdf

24   Treisman, D., 2000. 'The Causes of Corruption: A Cross-National Study', Journal of Public Economics, 76(3): 399-457.

25   Azfar, O. & Nelson, W. N., 2007. 'Transparency Wages and the Separation of Powers: An
      Experimental Analysis of Corruption', Public Choice, 130: 471-93.

In light of this, it is suggested that corruption, and consequently anti-corruption reforms, have been mischaracterised as a principal-agent phenomenon. This position essentially suggests that in a context where corruption exists as systemic, an individual is likely to engage in corruption despite personal moral disapproval of it or its costs for society at large. Indeed, the costs to an individual for being honest are in such instances comparatively high compared with being corrupt, and thus people become unwilling or even incapable of bearing the costs alone. From this perspective, corruption serves as a 'typical' collective action problem[26].

In conclusion, current international thinking about corruption tends to emphasise systemic over incidental explanations of corruption, while national anti-corruption agencies tend to focus on incidental acts[27]. This divergence between international and national responses has arguably resulted in a dichotomy of approaches, most notable for an absence of sequenced reforms and a project, or at best sectoral, oriented anti-corruption response.

1.2.6 Quiet corruption

Since 2010 the World Bank has coined the phrase 'quiet corruption' to articulate the sort of corruption that does not involve monetary exchange, and may or may not be observable, but still has a massive impact upon the poor[28]. Quiet corruption refers to behaviour on the part of front-line service providers, such as doctors, teachers, tax collectors and so on, that includes the 'deliberate bending of the rules for personal advantage'. This could include activities such as absenteeism or even deliberately poor performance of duty.

Quiet corruption can be just as perfidious as other types of corruption, as these actions (or inactions as the case may be) directly impact the well-being of the poor and could contribute significantly to lack of progress on the MDGs, despite government and donor investment in services.

1.2.7 Conclusion

It is important to recognise that, despite variances, these typologies of corruption are far from exclusive. Indeed, petty corruption coexists with and reinforces grand corruption and vice versa. Likewise, administrative corruption can exist side by side with, and feed, political corruption/state capture. For instance, petty corruption at the customs office may contribute to and/or finance large-scale corruption by maintaining the balance and organisation of power within the system. This, in turn, may fuel the greed of high-level public officials and ultimately contribute to the financing of political parties.

In short, an appreciation of these inter-related patterns is necessary. In order to effectively target anti-corruption policies the various typologies of corruption cannot be addressed in isolation.

1.3 Forms of public sector corruption

The United Nations Office for Drugs and Crime (UNODC) has developed a simple taxonomy (see Figure 2 below) to illustrate and delineate the most commonly agreed forms of public sector corruption. It is worthy of note that many of these agreed forms also have commonly accepted definitions within criminal law—definitions enshrined in the United Nations Convention Against Corruption (UNCAC, see Section 2 below). While some variances to this taxonomy occur[29], the growing harmonisation of anti-corruption frameworks and strategies among the donor community has led to widespread acceptance of the model given below in Figure 2.

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26 Persson, A., Bo Rothstein & J. Teorell, J., (2010.) 'The failure of anti-corruption policies: a theoretical mischaracterization of the problem'. QoG Working Paper 2010:19, available at: http://www.qog.pol.gu.se/working_papers/2010_19_Persson_Rothstein_Teorell.pdf

27 Larmour, P., 2007. 'A Short Introduction to Corruption and Anti-Corruption', CIES Working paper, 27.

28 This concept is new and has yet to find widespread acceptance in the academic and policy communities, but it is interesting to note briefly here.

29 Some of these, for example, are covered by UNCAC, while others are just criminological definitions established by UNODC where there is no globally accepted criminal law definition.

Figure 2: Forms of Corruption
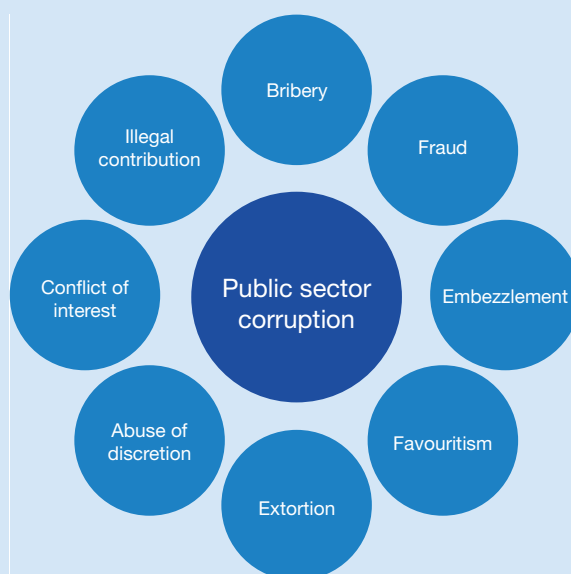
Source: UNODC (2004)

1.3.1 Bribery

The UNODC[30] defines bribery as 'the bestowing of a benefit in order to unduly influence an action or decision' and can be solicited in either the 'active' or passive' form. For instance, a customs official may accept bribes to ignore import duties and levies or to allow dangerous or prohibited goods crossing national borders. Bribery is a widespread corruption offence that affects the whole population, especially the poorest, in all areas of the public sector.

Box 4: Article 15 United Nations Convention against Corruption:
Bribery of national public officials

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:
(a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;
(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

1.3.2 Fraud

Fraud is determined by 'any behaviour designed to trick or fool another person or entity for one's own or a third party's benefit'[31]. For instance, a healthy individual can offer money to a doctor to obtain a false medical report, which can be presented to an employer in order to mislead him/her and obtain undue financial remuneration or compensation. Practices such as ballot box 'stuffing' during local or national elections may also be seen to constitute a form of fraud.

1.3.3 Embezzlement

Embezzlement refers to the stealing of funds or property from an employer, company or government. Embezzlement is defined as the 'taking or conversion of money, property or valuable items by an individual who is not entitled to them but, by virtue of his or her position or employment, has access to them'[32]. Examples of embezzlement may include instances such as if a public enterprise director were to employ company workers to build his own house or if officials in charge of distributing food to a local village steal a portion of the food and sell it to other parties. In certain cases, embezzlement involves huge amounts of money, feeding networks of corrupt politicians and high-level officials.

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30 UNODC, 2004.

31 Ibid.

32 Ibid.

1.3.4 Favouritism

Forms of corruption such as nepotism and cronyism amount fundamentally to an abuse of the power of discretion and arguably constitute 'personal gain' despite the fact that the most apparent beneficiary of the act are individuals somehow linked with an official rather than the official him or herself[33]. Further explanation behind the motives for this form of corruption define favouritism as 'the normal human inclination to prefer acquaintances, friends and family over strangers. [Corruption occurs] when public officials demonstrate favouritism to unfairly distribute positions and resources'. Nepotism occurs where public officials offer unfair favours to family members, while cronyism refers to the favourable treatment of friends[34].

1.3.5 Extortion

Extortion differs from bribery as it relies on a process of coercion where a person, company or institution forces another party 'to pay money or other valuables in exchange for acting or failing to act'[35]. For instance, a tax officer can threaten a citizen with the over-reporting of their income in order to force him or her to pay a bribe.

1.3.6 Abuse of discretion

Abuse of discretion occurs when officials utilise their 'vested authority to give undue preferential treatment to any group or individuals, or to discriminate against any group or individuals for personal gain'[36]. For instance, an elected official in charge of public service delivery may give preferential service delivery to their constituency while neglecting other constituencies.

1.3.7 Conflict of interest

A conflict of interest occurs when the personal interests of a public official conflict with those of their obligation to act in the best interest of the state[37]. Naturally, such private interests could improperly influence decision-making and the performance of an official's duties and responsibilities. For instance, a public official's membership of a club, group or association could be the source of interests that might conflict with his public duties.

1.3.8 Illegal contribution

These occur when a political party or government receives bribes in exchange for non-interference—or alternatively favouritism—with the affairs of the group or entity making the contribution. Illegal political contributions usually feed grand corruption and are channelled through large networks of corrupt politicians and high-level officials. However, the UNODC is keen to recognise that distinguishing between legitimate and illegitimate contributions to political organisations is one of the most challenging issues in the design of anti-corruption measures.

Section 2: Causes and consequences of corruption

Key points:
- Corruption disproportionately affects those from the poorest sectors of society.
- Weak institutions, inequality and low levels of democracy foster corruption.
- Economic liberalism is not a cure-all for corruption.
- International, national and local contexts all factor into the prevalence of corruption.

The following section provides a perspective of some of the popularly accepted causes and consequences of corruption and an introduction as to how and where corruption is understood to prevail. Corruption, it is argued, tends to flourish in environments where there are strong incentives in public and political spheres of administration to engage in corruption; where the specific structural characteristics of certain countries, such as natural resource endowments, favour its prevalence; and finally where economic regulations and law enforcement bodies are weak. Following a discussion of these variables, a more in-depth analysis of the domestic and external mechanisms underlying the emergence and development of corruption is then provided.

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33 Ibid.

34 See http://www.u4.no/helpdesk/faq/faqs1.cfm

35 UNODC, 2004.

36 Ibid.

37 Ibid.

Corruption is a complex phenomenon and a systemic feature of many societies; it is also one that is ineluctably intertwined with myriad international, national and local contexts. Understanding how and where corruption is most likely to occur and gain ground, alongside determining what the key drivers of corruption are and how it affects societies, therefore forms a challenging task.

Approaches such as that taken here, which examine corruption and its perceived causes and consequences, have proven, for their apparent clarity and actionable nature, understandably popular among policy-makers. It is critical to note however that the reality of corruption in the field is, as is so often the case, infinitely more complex. The process of determining the actual direction of causality between 'cause' and 'effect', let alone the problems inherent to universally defining them, is no black and white issue, and may form an inherently problematic and occasionally even counterproductive exercise.

2.1 Causes of corruption

It is important to understand the domestic and external mechanisms underlying the emergence and development of corruption. Some key factors, and the way(s) in which they are expected to affect corruption levels, are presented below.

2.1.1 Level of economic development and poverty

According to the U4[38] anti-corruption centre, 'there is no fixed, firm correlation between any particular level of economic development and the incidence of corruption'. Corruption and economic development appear trapped within a vicious circle, where the absence of economic development encourages corruption, and the prevalence of corruption restricts development and compounds poverty. Corruption, it may therefore be argued, serves as a cause of poverty, but the self-perpetuating nature of systemic poverty also limits economic growth and impedes the fight against corruption. It is surely no coincidence that the poorest countries on the planet are also among the worst affected by both structural corruption and systemic poverty.

Others[39] go further in guarding against 'rude evolutionism' in the search for a clear-cut relationship between abject poverty and corruption. Put more simply, expectations for levels of honesty and efficiency in the civil service must be mediated with a respect for the limitations imposed by abject poverty.

However, while it is important to recognise the need for exercising caution when theorising causal trends, it can nevertheless be argued that levels of economic development do appear to impact the form corruption takes and the sectors it tends to affect. For example, petty corruption appears prevalent in developing countries where public services, which ought to be supplied free of charge, are only supplied after the payment of a bribe.

2.1.2 Unintended consequences of economic liberalisation

Economic liberalisation is a process intended to expand the role of the private sector in the delivery of goods and services and increase competition among private firms in domestic and international markets. Such reforms are believed to offer a means by which to tackle corruption and encourage economic growth simultaneously.

Advocates of economic liberalism suggest that where the state is the main source of corruption, rolling back the state, restricting its activities and redefining its relationship with the economy is fundamental for reducing the opportunities for actors to engage in corruption[40]. Furthermore, analysts contend that this policy is expected to reduce the costs of public procurement, which in turn should reduce the bribes procurement officials may require[41]. In the same manner, competition from foreign markets, measured by the degree of trade openness, is also supposed to discourage corrupt behaviour.

However, assumptions that reductions in the size of the public sector brought about by economic liberalisation would automatically reduce levels of corruption have been shown to be overly optimistic[42]. Foreign competition, through market liberalisation, has the potential to place pressure on the domestic sector and narrow rents for firms and opportunities for bribery[43].

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38 See http://www.u4.no/helpdesk/faq/faqs1.cfm#3

39 Doig, A, & Riley, S., 1998. 'Corruption and Anti-Corruption Strategies: Issues and Case Studies from Developing Countries', in Cheema, G., S., & Bonvin, J. (eds) Corruption and Integrity Improvement Initiatives in Developing Economies. Paris: OECD, Ch. 3.

40 Ibid.

41 Lambsdorff, J. G., 2007. The Institutional Economics of Corruption and Reform: Theory, Evidence and Policy. Cambridge: Cambridge University Press.

42 Doig & Riley, 1998.

43 Ades, A. & Di Tella, R., 1999. 'Rents, Competition, and Corruption,' American Economic Review, 89(4): 982-993.

Furthermore, private sector growth and the process of privatisation itself have themselves created new opportunities for corruption in instances where state assets have been sold at below market price by elites in a corrupt, non-transparent manner[44]. Such processes frequently occurred without the necessary regulatory systems—an absence of which could be argued to have paved the way for grand corruption (e.g. Russia's privatisation process).

The expansion of the private sector necessitates more frequent interaction with the public sector and hence may increase the number of opportunities for private agents to bribe public officials. At the heart of this, 'influence overwhelmingly has resided in the control of the interface between public and private relationships and mixes'[45]. This allows public officials to continue to control this lucrative interface in many developing countries.

Significantly, corruption may occur within the private sector itself—in purely commercial transactions when a sales agent bribes purchasing agents to win business or within an enterprise where labour union leaders are paid off by managers to misrepresent workers' interests. Similarly, international trade may generate new opportunities for corruption, since bribes can be paid by foreign companies to obtain domestic contracts or by domestic companies seeking to gain privileged access to foreign markets[46].

2.1.3 Unintended consequences of state intervention

The link between state intervention and corruption is far from straightforward and should be considered with care by policy-makers and analysts. While economic liberalisation has undoubtedly been the dominant economic model over the last three decades, the role of the state—and more specifically state intervention—in generating corruption demands recognition. Although state intervention and improved governance usually accompany the economic development process, larger state interventions in a poor institutional environment may be associated with greater rents under the discretion of public officials, leading to an increase in the expected return from corrupt acts[47]. Thus, state intervention may in certain contexts foster corruption through excessive red tape, taxation and reduced competition.

- **Red tape:** Excessive and/or poorly-designed bureaucratic rules that incur non-pecuniary costs for agents dealing with bureaucracy (i.e. time and resources spent by firms and households dealing with public administration). While administrative rules and procedures do not necessarily imply higher incentives for corruption, excessive regulation may provide public officials with increased opportunities and rents, where bureaucratic barriers encourage agents to bribe officials to overcome them.

- **Taxation:** In administrations where fiscal control mechanisms are ineffective, higher tax rates may increase the amount of bribes required by corrupt officials to enable tax evasion, leading to higher levels of corruption. Moreover, higher tax levels may also encourage extortion by inciting tax officers to over-report, or threatening to over-report, taxable incomes. Similarly, high tariff and non-tariff barriers may also create opportunities for custom officers to 'sell' favourable treatment to private companies.

Often occurring alongside economic liberalisation and the rolling back of the state, decentralisation is also expected to reduce corruption. Decentralisation is thought to decrease the opportunities for corrupt behaviour by devolving policy—and decision-making powers—closer to citizens, and therefore enabling an increased and improved grassroots scrutiny of local political and administrative elites by the general public and non-state actors.

However, decentralisation, it is argued, can also increase corruption with its transfer of greater power to local government, allowing for greater intimacy and frequency of interaction between individuals and corruptible officials[48]. This raises the question of the neutrality and objectivity of public officials towards individuals and, in particular, the private sector, that may be reduced at lower levels. A helpful example of the unintended consequences of decentralisation can be seen in China where a stagnant economy forced the Chinese government to give greater autonomy to local authorities to determine the allocation of resources. In this particular case, greater local autonomy resulted in the revival of old patron-client networks and new patterns of corruption[49].

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44 See http://www.u4.no/helpdesk/faq/faqs1.cfm#3

45 Sutch, cited in Wedel, J., 2005. 'Blurring the State-Private Divide: Flex Organisations and the Decline of Accountability', available at http://janinewedel.info/scholarly_Kluwer.pdf

46 Tanzi, V., 1998. 'Corruption Around the World: Causes, Consequences, Scope and Cures'. IMF Staff Papers, 45 (4), available at http://www.imf.org/external/pubs/ft/staffp/1998/12-98/pdf/tanzi.pdf

47 Ibid.

48 Ibid.

49 Ibid.

2.1.4 Weak institutions

The World Bank[50] contends that 'multiple, co-ordinated and reinforced' institutions are fundamental for the preservation of effective service delivery and prevention of power abuse by ruling elites as well as low- to mid-level officials. In contrast, it seems self-evident that weak institutions do little to hold corrupt politicians and officials to account or to prevent systematic corruption.

The UNODC[51] contends that institution-building represents an important part of national anti-corruption strategies, and it is one reflected in and integral to many international anti-corruption conventions and most development projects. In short, it seems an accepted truth that the absence of institutionally driven checks and balances are likely to foster a climate that is conducive to systemic corruption.

2.1.5 Lack of accountability and transparency

While lines of causation are far from proven, corruption appears to thrive where accountability and transparency mechanisms, particularly within an institutional context, are minimal. Although the ultimate sanction in a democracy is the removal of corrupt incumbents by the electorate, it is often the case that where corruption is rife, an orderly, structured environment with political competition, accountability and transparency is not. Corruption appears to be both a cause and an effect of unaccountable institutions[52].

2.1.6 Inequality

Countries experiencing chronic poverty and high levels of inequality form areas of particular concern with regards to vulnerability to corruption; furthermore, a positive correlation between levels of corruption and levels of inequality suggest that corruption fosters divisions in society, creating and sustaining 'fault lines' between those who benefit from corruption and those that do not.[53]

The relationship between gender and corruption, for example, has been investigated by sociologists and economists alike[54]. It has been hypothesised that male-dominated structures are set up in societies to promote particularistic interests at the expense of those of the society at large. It is, therefore, proposed that improved women's rights may contribute to lowering levels of corruption. A reverse causality has been suggested in this regard. In fact, it is thought that low levels of corruption may restrict male-dominated networks and, therefore, improve women's access to higher positions.

There is an ongoing debate on whether women are naturally less corrupt than men[55]. Some researchers have observed that a better mix of sexes as opposed to male dominance tends to reduce corruption levels[56]. However, while there are assertions that a gender balance would contribute to the reduction in levels of corruption, Al-hassan Alolo, an economist at the African Development Bank, conducted research in Ghana that clearly suggests that it is perhaps the absence of wider notions of 'equality' acting as a cause of corruption—whether the inequality be gender, income, education and so forth—rather than women naturally being less 'corrupt'[57]. Her research, which looks at attitudes towards corruption among men and women in the public sector, show that women are no more or less likely to condemn or condone corruption than men, but that they do not have access to the same networks and opportunities for corruption. This suggests that if women were to gain more access to power – i.e., if society were to become more equal, opening up these networks and opportunities, they are likely to be just as corrupt—or honest—as men.

Interestingly, this suggests that although inequality is believed to be a significant contributor to corruption, reducing inequality in itself is unlikely, at least in the short term, to reduce corruption, as previously excluded groups gain access to opportunities for corruption.

2.1.7 Democracy or the lack of democracy

Transparency International's (TI) Corruption Perception Index demonstrates a clear negative correlation between corruption levels and democracy. By enabling increased voter scrutiny of political decisions, freedom of the media, electoral

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50 See the World Bank's Anti-Corruption website at http://go.worldbank.org/QYRWVXVH40

51 UNODC, 2004.

52 See http://www.u4.no/helpdesk/faq/faqs1.cfm#3

53 Chetwynd, E., Chetwynd, F., & Spector, B., 2003. 'Corruption and Poverty: A Review of Recent Literature',
    available at http://www.u4.no/document/literature/corruption-and-poverty.pdf.

54 Swamy et al, 2001. 'Gender and Corruption', Journal of Development Economics, 64:25-55; see also GTZ, 2010. 'Gender & Corruption
    in Development Cooperation', available at http://www2.gtz.de/dokumente/bib/gtz2010-0441en-gender-corruption.pdf.

55 Sumg, 2003. 'Fairer Sex or Fairer System ? Gender and Corruption Revisited', Social Forces, 82(2): 703-23.

56 Lambsdorf, 2007.

57 Al-hassan Alolo, N., (2007). 'Gender and corruption: testing the new consensus', Public Administration & Development, 27: 227-37.

competition and fostering civic engagement, cases of corruption are more likely to be exposed, integrity enforced and political accountability improved in democratic systems.

The link between democracy and corruption is, however, more nuanced than initial inspection might suggest, since measurements of the two phenomena may be contested (see Chapter 3 on the use of the CPI as 'data', for example). Moreover, it has been found that electoral competition may give rise to corruption by increasing the needs of political parties to raise funds. It appears that the negative relationship between corruption levels and democracy depends on how well institutionally entrenched the democracy is in a given country.

2.1.8 Unintended consequences of international corporations and 'Foreign Direct Investment' (FDI)

International corporations and foreign direct investment (FDI) are essential ingredients for economic growth and poverty reduction. As such, the 2003 Communication on Corruption recognises the relationship between corruption and the private sector as well as its own responsibilities in supporting the private sector, especially through corporate responsibility initiatives and, more specifically, DG Trade.
However, international companies and FDI can also undermine local business and financial institutions as well as feeding political and administrative corruption through bribery and state capture. As illustrated by TI's International Bribe Payer Index, FDI may contribute to the supply side of corruption. Indeed, corrupt governments may make agreements with foreign companies so that the latter benefit from privileged conditions for doing business and access to domestic markets. International corporations can also use their economic power to unduly influence policy-making and legislative decisions in their favour and to escape domestic economic regulations.

2.1.9 Offshore banking, tax havens and money laundering

Global financial liberalisation has been accompanied by the development of offshore financial banking facilities and tax havens where the proceeds of corruption can be held. These centres are generally located in small, physically and legally isolated, independent jurisdictions, opaque in nature with ambiguous constitutional status and are the principal outlet for the proceeds of corruption and money laundering. Thus, funds resulting from corruption, organised crime, drug trafficking or tax fraud are often channelled through offshore companies benefiting from the commercial provision of multi-currency accounts and complex asset management services.

2.1.10 International organised crime

International organised crime inevitably fuels corruption, since administrative corruption, in particular law enforcement agencies, can enable organised crime to facilitate and sustain both its illicit and licit activities (dependent of course upon the type of criminal organisation). Indeed, international organised crime invests huge amounts of laundered money, originating from illegal activities (e.g. trafficking in drugs, human beings, arms, stolen cars and so on), into legal activities (e.g. creation of legal companies and investment in legal assets). The illegal activities as well as the proceeds thereof need obviously to be secured or protected against loss by the bribery of, for instance, politicians, judicial authorities, police and custom officers.

Offshore financial centres also perpetuate organised crime operations and corruption, since these 'twin' activities share the need to hide and launder their proceeds.

2.2 Consequences of corruption

Corruption is a pervasive phenomenon that negatively affects people's well-being and limits prospects for economic and social development. The consequences of corruption are not limited to economic inefficiencies; it also reduces the provision of welfare in society, undermines democracy and political institutions, contributes to social inequalities and conflict, can have a potentially devastating impact upon the environment and constitutes a violation of human rights.

2.2.1 Hampering economic growth and development

While certain older studies have suggested that corruption might foster economic development, 'greasing the wheels' of poorly designed regulations and legal frameworks, there is today a consensus that corruption is strongly detrimental to economic development.

Measuring the negative impact of corruption on growth and development remains complicated given the challenges of defining and measuring the interdependent relationship between institutional quality and economic development. Nonetheless, it is also clear that corruption impedes growth and development through various channels, such as the deterioration of the macroeconomic environment and the conduct of business and aid effectiveness.

Corruption negatively affects business at both macro and microeconomic levels. At the macroeconomic level, corruption fundamentally serves to compromise and hinder effective, equitable and efficient management of public finances and long-term economic stability. Economic efficiency in particular is affected, as corruption may serve to narrow the tax base, distort market signals and divert resources from their intended purpose. This has disproportionately severe consequences for the poor, as the public sector services on which they tend to have greater reliance (such as health or education) are highly vulnerable to theft of resources. Further consequences of corruption for the macroeconomic environment include negative impacts on fiscal deficit, levels of debt and inflation and greater economic instability. At the microeconomic level, corruption strongly deters investment, often acting as a barrier to entry for firms, and by decreasing the expected returns of foreign and domestic investments due to a risky and uncertain business environment. As a result, corruption reduces and diverts resources from productive investment, creates unfair competition, complicates and delays business transactions and undermines enterprise creation.

Finally, corruption negatively impinges on aid effectiveness and the willingness of the donor community, and their domestic constituencies, to provide aid and development assistance. Specific problems include the leakage of funds, the lack of efficiency and the ineffectiveness of development projects and, perhaps most significantly, the diversion of development assistance from its original purpose by corrupt politicians and officials.

2.2.2 Jeopardising poverty reduction and welfare

In developing countries, corruption is a widespread phenomenon that affects many aspects of people's lives on a daily basis—disproportionately affecting those from the poorest sectors of society. Indeed, citizens face corruption while accessing basic public services and obtaining licences or permits. Individuals can also indirectly confront the effects of corruption through defective public infrastructure or when corrupt transactions lead to a degradation of their own living environment and/or the environments on which their livelihoods depend.

As noted above, corruption can undermine access to public services, such as education or health, as public spending dedicated to such sectors is frequently diverted through embezzlement or fraud so that only a small proportion of public expenditure actually reaches its intended beneficiaries. Such problems are compounded further when households already hard-pressed to make ends meet are often forced to make extra payments to ensure that their children get access to school or healthcare. Corruption also hampers the access to utilities, such as electricity or water, or public housing when individuals are not able to bribe the appropriate public official. In this respect, it directly affects the likelihood of a country reaching the Millennium Development Goals.

From a moral perspective at least, corruption is also detrimental to wider human rights efforts and is particularly disproportionate with regards to its impact, since it is the poor who are most likely to be seriously affected. The disproportional impact of corruption on human rights has been noted by the UNDP who contend that, 'corruption affects the poor disproportionately due to their powerlessness to change the status quo and inability to pay bribes, creating inequalities that violate their human rights'[58].

> **Box 5: Corruption and Human Rights**
>
> Corruption can deprive the poorest individuals of their fundamental rights in various ways: firstly, it can hamper the right to benefit from basic and essential services; secondly, corruption undermines political accountability and thus constitutes a serious obstacle to the exercise of political rights; finally, corruption is a huge factor in discrimination of the poorest and most marginalised groups (including women and minorities). This is a serious impediment to the principle of equality and equal treatment of individuals by governments, expressed by the Universal Declaration of the Human Rights.

Finally, an issue interrelated with those discussed above, is the concern for corruption's negative impact on the environment. Corruption within the natural resource and environmental sector may have wide-reaching impacts; it may be embedded within more complex local, regional and international social, political and economic contexts and manifest in various ways. By diverting resources allocated to environmental programs or conservation initiatives to private pockets, for instance, corruption may distract from or even drive practices such as wildlife or other natural resource trafficking. In another instance, when levels of corruption allow an agent, be they individual or industry, to escape protocols that ensure responsible disposal of waste through bribing the relevant officer, for instance, it is clear to see how corruption can directly affect issues such as environmental pollution. Such practices are themselves a significant concern for various interest groups at a global level, but they may also present problems at a local level where environmental damage leads to more immediate concerns for the livelihoods, health and well-being, and—when taking into account the high correlation between natural resource exploitation and armed conflict—the safety of local communities.

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58   UNDP, 2004. 'Anti-Corruption Practice Note',. New York: UNDP, available at http://www.u4.no/
      pdf/?file=/document/literature/UNDP-2004-anti-corruption-practice.pdf

It is clear to note from this how corruption may be found to significantly damage the working environments and health of the poor. Indeed, in such instances where private companies evade environmental regulations and damage local environments, the disproportionate effects of corruption on the poor once more become apparent. Such people are often the principal victims of corrupt behaviour, a reality compounded by low levels of political and economic empowerment and an inability to hold companies to account or enforce their rights.

2.2.3 Increasing social costs

Corruption contributes significantly to poverty, social and economic inequalities, and conflict. Firstly, corruption undermines economic growth, which is a prerequisite for the eradication of poverty and inequality. Moreover, by fostering inflation and macroeconomic instability, corruption hurts the poor—who cannot protect their assets—, while also eroding the tax base and affecting the government's ability to maintain social spending.

Corruption also weakens the institutional capacity to fight poverty by undermining the ability of a government to design and effectively and efficiently implement poverty reduction strategies. Indeed, through undermining the capacity to realise reasonable budget forecasts, diverting resources from sectors with strong poverty reduction potential and through lowering project effectiveness and sustainability, corruption weakens public institutions and therefore represents a major obstacle to poverty and inequality reduction.

Corruption is detrimental to social cohesion by separating the rich from the poor and promoting rivalries and jealousies between ethnic groups and communities. It also fosters a climate of suspicion and mistrust, where individuals are rewarded for their selfishness and where collective action is perverted. Finally, it deepens the gap between the ruling elite and the citizenry, which undermines respect for authority and encourages impunity. Such conditions may ultimately force a country into a vicious cycle, where the social and cultural impacts of corruption generate social attitudes and institutional weaknesses that further entrench it in society.

2.2.4 Weakening democracy

Corruption has the potential to negatively impact political systems, depending on the level and type of corruption and the nature of the political system. Indeed, while precise political costs cannot be generalised due to country context-dependent political systems, corruption undoubtedly has detrimental effects on democracy and the quality of political institutions. This can be by:
• Substituting the public interest with a personal gain ideology, which can damage the way citizens and future generations of elites regard politics;
• Perverting the conduct and results of elections;
• Politically disempowering the poor and marginalised social groups;
• Reducing political competition;
• Provoking political unrest and public mistrust in political institutions/processes;
• Deterring the quality of public policies and transparency in political decision-making;
• Contributing to the disaffection of the international community with the government, risking isolation by the international community; and
• Hampering social cohesion, creating social injustice and public mistrust towards politicians, which may foster political instability and lead to coup d'état or civil wars.

While the political consequences of corruption are of primary concern for both rulers and donors involved in fighting corruption, the objectives of these two groups are often far from aligned. Since domestic political elites often stand to gain, in terms of rents, from maintaining the status quo, the foundations of political will and domestic leadership for anti-corruption efforts are often quickly eroded. However, social unrest and the lack of transparency and accountability in the political arena may give rise to a popular demand for better governance, which can be an important driver for changes and grassroots reforms.

2.2.5 Conflict

While the relationship between corruption and conflict is complex, recognition of the linkage is important since it represents a departure point from more orthodox developmental contexts and understandings of conflict[59].

In both conflict and post-conflict environments, corruption is likely to play an important and dynamic role. Since conflict is associated with the breakdown in governmental structures and the entrenchment of corrupt practices, a thorough corruption-sensitive analysis of proposed interventions is advisable in order to do no harm and prevent corruption from contributing to a return to violence[60].

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59 See http://www.u4.no/document/literature.cfm?key=57
60 Le Billon, P., 2005. 'Buying Peace or Fuelling War: The Role of Corruption in Armed Conflicts', Journal of International Development, 15: 413-26, available at http://www.geog.ubc.ca/~lebillon/corruption.pdf

The 2011 World Development Report draws upon a background report by Michael Johnston: First, Do No Harm – Then, Build Trust: Anti-Corruption Strategies in Fragile Situations. One of Johnston's key points is that '…direct attacks on corruption may be the last thing a fragile situation needs in the early stages of transition. Such attacks may require credibility, material resources, expertise and institutional strength that a regime and state do not possess. When society is divided, attacks on corruption may only be perceived as more factional or ethnic conflict'[61]. As Marquette points out, 'After all, fighting corruption is inherently destabilising. That is what it means – a fight, a battle, a war. It is about taking power and resources away from one group to give it to another – ideally to "the public", but often it ends up being about moving from one powerful group to another. In fragile states, further destabilisation might be catastrophic'[62].

Instead, Johnston 'propose[s] long-term, indirect strategies'[63] that look to build essential trust within society and to build the state's capacity. It will be interesting to see what the impact of this is on aid policy in the coming years. The underlying themes of being realistic, going for indirect strategies over the long-term, and for building integrity rather than fighting corruption are likely to apply everywhere, and not just in conflict-affected states.

2.2.6 The unintended consequences of development assistance

While the overall benefits of developmental assistance are clear and well documented, the unintended consequences of aid should be recognised. Corruption undermines international donor agencies' developmental efforts. U4 suggests that, while paradoxical, increasing the flow of aid can increase the levels and costs of corruption. While more obviously increasing the availability of corruptible resources, new aid flows can also free up domestic funds for other purposes.

It is important to note that despite the risks, donors have tended to supply more assistance to countries with a high prevalence of corruption than higher levels of good governance. This may, of course, be simply a consequence of a necessary focus on the poorest countries, which often have significant problems with corruption.

Donors may often be faced with the dilemma that, in spite of all the control mechanisms that they can introduce into their assistance programmes, it is generally impossible to guard against all of the risks of corruption. In the end then, donors need to balance the risks of engagement with the benefits of aid distribution.

The rising tide of good governance has further focused donors' attention upon issues of corruption and its relationship with aid effectiveness. In several cases, donors have become more proactive, using budget support and, more importantly, the withholding of payments when anti-corruption reforms (e.g. anti-corruption agencies) do not perform as predicted.

Box 6: The culture of per diems and corruption

A recent U4 publication (2009—see http://www.u4.no/helpdesk/helpdesk/query.cfm?id=220) highlighted the unintended consequences of the practice of per diems and sitting allowances for public service employees. While these allowances were clearly intended to increase public sector capacity, a number of negative practices were found to have emerged from them. The drawbacks of this compensation system focus upon 'coping strategies' that public sector employees invoke to 'top up' their salaries. A significant 'top up' income is that obtained from donor allowances which can have the following negative effects: 'distortions to the incentive structure for public servants, encouraging specific forms of corruption and patronage, creating situations favourable to conflicts of interest, competition for time and brain drain'.

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61 M Johnston, 2010, First, Do No Harm – Then, Build Trust: Anti-Corruption Strategies in Fragile
    Situations, World Development Report 2011 Background Paper, p. 13.

62 Marquette, H, 2011, 'Donors, State-building and Corruption: Lessons from Afghanistan
    and the Implications for Aid Policy', Third World Quarterly, 32(10).

63 Johnston, p. 3.

CHAPTER TWO: ADDRESSING CORRUPTION IN A GLOBALISED WORLD

Following discussions in the previous section concerning the definitions of corruption and illustrations of its potential causes and consequences, this section seeks to situate corruption within a global context. Examining the evolution of international efforts to recognise and prevent corruption, the progress of these efforts is charted via the significant geographically and thematically diverse conventions and instruments that attempt to address corruption in an increasingly globalised context.

Section 1: International and regional conventions and instruments

1.1   The Historical Context

Key points:

- International efforts to curb corruption have expanded extensively since the early 1990s.
- Multilateral conventions have been adopted in order to curtail corrupt practices of multinational corporations.

In order to understand international efforts to address corruption, it is important to situate the subject within a historical context. While the 'legal' landmark recognition of corruption in Europe goes back to the Napoleonic Code of 1810, which introduced penalties to combat corruption in public life, little was done to address the issue internationally until the 1970s.

Through the subsequent presentation of the major international corruption conventions, understandings of corruption, and with them the focus of anti-corruption measures, have gradually evolved. International instruments have shifted away from the activities of Western (business) actors, towards a more thorough understanding of the 'demand' and 'supply' side of corruption and the anti-corruption measures required for an increasingly international and complex phenomenon.

Following a number of corruption scandals involving Western-owned multinationals abroad in the 1970s, pioneering efforts to address corruption were taken by the United States and focused solely upon the behaviour of Western companies. The US was the first nation to criminalise the extraterritorial payment of bribes by domestic companies in the form of the US Foreign Corrupt Practices Act (FCPA) of 1977. These efforts were aimed at criminalising the bribery of foreign officials by US companies. Individuals found guilty are subject to incarceration, fines or both. This Act was to prove one of the drivers of an international regime to try and create a level playing field for all international business.

The end of the Cold War created a new international environment where corruption could no longer be tolerated for reasons of national security, among others. Furthermore, with new emphasis on the push for democratisation, transparency and accountability that symbolised this period, the fight against corruption became a major focus for international financial and development institutions.

In seeking to explain the growing corruption phenomenon, experts were divided. Some analysts alleged that privatisation and deregulation initiatives created opportunities for corrupt activities. Others argued that increased levels of corruption resulted from reductions in trade barriers and an increase in competition between multinationals. It was widely recognised by governments and institutions around the world that corruption was a global, trans-boundary problem and therefore could only be tackled at the international level.

However, in this respect it was also acknowledged that international police and judicial cooperation in the fight against international organised crime and corruption was inefficient because seriously hampered by the lack of harmonisation of national legal systems, as well as the lack of capacities and appropriate cooperation mechanisms of the national law enforcement and judicial authorities.

In the post-Cold War period there was also an increasing international consensus that the corrupt practices of multinational companies and other actors had negative effects on developing countries. These negative effects included:

- Undermining economic prospects, fostering inequality and exacerbating poverty;
- Creating disadvantages for foreign domestic firms;
- Creating greater inequality between poor and rich countries by transferring money that could be used for poverty eradication into the hand of the rich;
- Damaging the environment;
- Undermining democratic institutions; and
- Fostering organised crime (illicit trafficking of drugs, arms, human beings, etc.).

Following this international consensus and the benchmark established by the FCPA, attempts were made to level the playing field. US-based multinational companies had come to feel disadvantaged in the global market place, since non-US multinationals were not subject to the same stringent prohibitions on bribery. Thus in 1997, OECD member countries decided to curb bribe-giving in international business with the creation and ratification of the 1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

At the same time, attempts were made to step up the fight against international organised crime and corruption, which had become an increasing global threat to the security, governance and economy of all states, by improving international police and judicial cooperation through the adoption of international conventions aiming towards legal harmonisation and establishing more efficient cooperation mechanisms.

In this new context, a number of multilateral conventions have been negotiated, adopted and ratified. They represent binding agreements at the sub-regional, regional or global levels. While all of these conventions are important and useful, the following list will limit itself to the most significant conventions, namely (in chronological order):

- The Inter-American Convention against Corruption (adopted in 1996);
- The 1st Protocol (adopted in 1996) to the 1995 EU Convention on the Protection of the Financial Interests of the European Communities, followed by the EU Convention on Anti-Corruption (adopted in 1997);
- The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (adopted in 1997);
- The Council of Europe Criminal Law Convention on Corruption (adopted in 1998);
- The Council of Europe Civil Law Convention on Corruption (adopted in 1999);
- The African Union Convention on Preventing and Combating Corruption, AUCAC (adopted in 2003); and
- The United Nations Convention against Corruption, UNCAC (adopted in 2003).

In this concept paper, we will start with a discussion of UNCAC, which is the only global and comprehensive anti-corruption instrument. This will be followed by a presentation of some of the regional anti-corruption conventions.

The summaries of the various conventions provided here highlight the extent to which they vary in their scope and geographical coverage. Some conventions cover a limited range of themes and countries while others take a more comprehensive approach to corruption in terms of the range of subjects they deal with or in their geographical coverage. These conventions set individual standards and requirements for the prevention and detection, as well as the investigation and sanctioning of corrupt behaviour, and have also sought to establish frameworks for international cooperation in the fight against it. Given the needs and specificities of criminal law, these conventions are in general more prescriptive with regards to action involving sanctioning (e.g. criminal prosecution) than they are with other more inter-disciplinary areas, such as prevention.

Through effective review processes, either provided within the conventions or put in place after they have come into force, they are intended to establish peer pressure on Member States. Such Conventions are also intended to provide civil society with a useful tool with which to hold governments to account. The role of the private sector is also taken into account, and pressure is exerted on private sector actors to participate alongside their public sector counterparts in efforts to fight corruption.

1.2   The United Nations Convention Against Corruption

The United Nations Convention against Corruption (UNCAC) represents one of the most recent and extensive Conventions to specifically recognise and tackle corruption. UNCAC comprehensively requires that States Parties put in place and implement effective, coordinated anti-corruption policies that promote the participation of non-state actors and set forth the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability. States Parties are also required to develop and promote effective corruption prevention measures centring on public procurement (Art. 9), the judiciary (Art. 11) and the private sector (Art. 12).

Adopted by the UN General Assembly by resolution 58/4 of 31 October 2003, UNCAC represents the most comprehensive legal instrument to date in the fight against corruption. While it does not explicitly define corruption, it sets out to define and criminalise the actions of corruption to which its provisions apply and establishes four main pillars: Prevention (Chapter 2), Criminalisation (Chapter 3), International Co-operation (Chapter 4) and Asset Recovery (Chapter 5).

Chapter 3 (Criminalisation) defines the following mandatory offences:
- Active and passive bribery of national public officials;
- Active bribery of national and foreign public officials (Arts. 15 and 16);
- Embezzlement, misappropriation or other diversion of property by a public official (Art. 17);
- Laundering of the proceeds of corruption (Art. 23); and
- Obstruction of Justice (Art. 25).

Further acts of corruption are depicted as advisable, but non-mandatory, by the Convention:
- Passive bribery of foreign and international public officials (Art. 16);
- Active and passive bribery in the private sector (Art. 21);
- Trading in influence (Art. 18);
- Abuse of Function (Art. 19);
- Embezzlement, misappropriation or other diversion of property in the private sector (Art. 21); and
- Illicit enrichment (Art. 20).

With extensive provisions for the definition of various corrupt practices, Chapter 3 of the UNCAC goes beyond previous instruments, not only criminalising basic acts of corruption, but also the acts of trading influence, concealment and the laundering of proceeds of corruption.

The Convention dedicates an entire chapter to the prevention of corruption and legislates for inter-Member State co-operation. In terms of specifics, Chapter 2 places an emphasis upon effective and co-ordinated anti-corruption policies and bodies, public procurement, the judiciary and the private sector for preventative measures intended to improve transparency, integrity and accountability.

Chapter 5 recognises asset recovery to be a fundamental principle of the UNCAC and that co-operation and assistance shall be assisted to parties where necessary in order to recover funds. The Chapter mainly focuses upon the prevention of the transfer of the proceeds of crime (Art.52) and the return of assets (Art. 57), with specific provisions to guard against the embezzlement and laundering of public funds.

The importance of the international nature of corruption as a phenomenon is recognised in Chapter 4 of the UNCAC which seeks to facilitate international co-operation. Driving this emphasis upon international cooperation is the recognition that worldwide efforts to combat corruption are impeded by the huge variation in national definitions of corruption-related offences arising from a diverse range of legal traditions and cultural norms.

Such international variation represents a fundamental challenge for international judicial co-operation, an example being the principle of 'dual criminality', whereby inter-state legal cooperation will be refused for acts alleged as crimes if they are not also defined as crimes in the jurisdiction receiving the request for assistance. Thus, an emphasis within the Chapter upon extradition, ensuring that all offences under the Convention are extraditable between States Parties, and mutual legal assistance are intended to bolster international co-operation among state signatories (see Annex 1).

In reflecting upon the scope of the UNCAC, its primary aim appears to be the provision of a comprehensive, universally accepted legal instrument to prevent and combat corruption. However, the convention's extensive mandate goes further in establishing an ambitious review mechanism. A self-assessment system has been developed by the UN Office on Drugs and Crime (UNODC) to help States Parties and signatories to the convention regularly report on progress.

Furthermore, the Conference of the States Parties to the Convention, which was intended to oversee its implementation, decided in November 2009 to establish a review mechanism in order to complement the self-assessment system. The European Commission took an active part in the negotiations leading to the establishment of a review mechanism for implementation of the Convention during the Conference of States Parties in Doha in November 2009.

The Terms of Reference (TOR) of the review mechanism as contained in Resolution 3/1 of the Conference of the States Parties specify:
- Implementation of UNCAC will be reviewed by way of a peer review process, where each State party shall be reviewed by two other States parties, and the State party under review should be actively involved;
- Governmental experts will be appointed by States Parties to carry out reviews;
- Each review phase shall be composed of two review cycles of five years each and all States parties must undergo the review within each cycle;

- The first review cycle will cover UNCAC Chapters 3 (criminalization and law enforcement) and 4 (international cooperation);
- The desk review will be based on the responses to the comprehensive self-assessment checklist. Active dialogue between the country under review and the Reviewers is a key component of the process; and
- A country review report and executive summary of this report will be prepared under the ownership of the country under review.

The EU has advocated a review mechanism of a technical nature, promoting open and constructive collaboration and dialogue. The review mechanism is set to facilitate effective implementation of the Convention, identify successes and challenges in implementation, promote and strengthen international cooperation and identify technical assistance needs. The lessons learned through this process shall then be used to inform and improve the European Commission's anti-corruption assistance efforts in partner countries.

In order to achieve effective implementation of the Convention, the EU firmly believes that three non-mandatory elements of this mechanism are essential for strengthening its implementation: the participation of civil society in the review process; country visits by the reviewers; and the publication of full country review reports.

UNCAC remains the most comprehensive and universally respected anti-corruption convention to date. It seems worth it to include some elements on the number of States Parties having ratified the Convention and to mention that in September 2005 the European Community, represented by the European Commission, signed the 2003 United Nations Convention Against Corruption (UNCAC) and ratified it in November 2008. Therefore, the EU as represented by the European Commission is now party to the Convention.

1.3   Regional Conventions

1.3.1   The Inter-American Convention against Corruption of the Organisation of American States (OAS)

In the midst of numerous high profile corruption scandals, the first summit of the Americas and the Organisation of American States (OAS) undertook and adopted the Inter-American Convention against Corruption in 1996. This Convention represents the first regional judicial instrument dedicated to fighting corruption. Others [64] go further, suggesting that the Convention was the first to agree to the principles of the US Foreign Corrupt Practices Act (FCPA).

The Convention aims to promote the development of the necessary mechanisms to 'prevent, detect, prosecute, and eradicate corruption', as well as to 'promote, facilitate, and regulate cooperation between States Parties on these matters'[65]. Its structure consists of two parts: one dedicated to preventing corruption and the other to repressing certain corrupt practices.

The Convention criminalises the following acts:
- Active bribery;
- Passive bribery;
- Transnational bribery;
- Illicit enrichment;
- The improper use of classified or confidential information;
- The improper use of state property;
- Using influence on public authorities for illicit personal gain; and
- The diversion of property or assets.

Following the criminalising of the above-mentioned acts, signatories are obliged to incorporate them into their own judicial systems in order to repress corruption through prosecution[66]. Furthermore, the Convention obliges parties to implement a series of measures related to their judicial systems and public policies.
The Convention is clearly structured around two key objectives: the development of preventative measures and the repression of corrupt practices. In the case of the former, under Article III, States Parties are obliged to consider preventative measures applicable to their own institutional systems. Whilst for the latter, the repression of corruption requires States Parties to criminalise a series of practices and incorporate them into their own judicial systems for corruption offences to be sanctionable under criminal law.

While the Convention does not contain any specific provision on anti-corruption policies, action plans or bodies, it does

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64   Salbu, S., R., 1997. 'Bribery in the Global Market: A Critical Analysis of the Foreign Corrupt
      Practices Act', Washington and Lee Law Review, 54(1): 229-87.

65   See http://www.oas.org/juridico/english/FightCur.html

66   Ibid.

call for a number of programmatic, non-binding measures to be established, maintained or strengthened in relation to the public sector.. These measures consist of standards of conduct for the proper fulfilment of public functions, instructions to government personnel to ensure proper understanding of their responsibilities, systems for registering the income of public officials, sound public procurement systems, government revenue collection and control systems that deter corruption and mechanisms to ensure the accuracy of public companies' books and records.

The Convention provides broad criteria for jurisdiction and is applicable whenever an alleged act of corruption is committed or has an effect on a State Party. It foresees that States Parties establish their jurisdiction over offences committed in their territories either by nationals or foreign residents as well as when the alleged criminal is present in one of those territories and is not extradited by the State.

With regards to international and regional cooperation, the Convention requires that States Parties provide each other with the broadest possible measure of assistance in the identification, tracing, freezing, seizure and forfeiture of property or proceeds obtained, derived from or used in the commission of corruption offences. This assistance also encompasses the transfer of such property or proceeds from one State Party to another when the latter has provided assistance in the investigations.

Adopted in March 1996, the Convention entered into force June 1997 with all thirty-four OAS signatories endorsing the Convention. The follow-up mechanism for its implementation was not initiated until 2002; the sluggish pace was apparently due to non-participation of Member States and problems with the voluntary funding system for the mechanism.

The implementation of the Convention was intended to take place within the framework of purposes established by the Charter of the OAS. The OAS established the Mechanism for Follow-up on the Implementation of the Inter-American Convention against Corruption (MESICIC) in order to facilitate an effective process of reciprocal evaluation.

Scheduled within the mechanism are successive 'rounds' that evaluate how member parties are implementing the relevant provisions of the Convention. This process is followed by the compilation of individual country 'reports', that are able to provide concrete recommendations for each state in order to better help them redress legal loopholes and resolve inadequacies as well as providing a series of indicators against which progress may be more objectively measured. Civil society organisations are also encouraged to participate in this process and submit information along the lines of those provided by the respective state.

However, while MESICIC appears comprehensively structured, comprising of two bodies (Conference of States Parties and Committee of Experts) and a monitoring process (involving country self-assessments, civil society written responses and an active secretariat), it has suffered from the non-participation of Member States[67]. The 2008 OAS follow-up to the Convention urged Member States to participate in MESICIC and re-emphasised the requirement for its voluntary funding. The follow-up to the Convention also urged Member States to apply the necessary measures within domestic law to comply with their commitments to the Convention, highlighting the weakness of this effectively voluntary Convention and the absence of enforcement measures.

Thus, implementation appears to have been a major stumbling block for this pioneering Convention. Going further than the OAS's more diplomatic language, external commentators[68] suggest that little concrete progress has been made in using the IACAC in the fight against corruption, and additionally that Venezuela's policy of obstructing the development of civil society represents a significant challenge to the OAS. Monitoring the Convention's implementation using a sample of countries, TI found that countries had made 'few advances', underlining requests for indicators that reflect real levels of Convention implementation.

1.3.2 The OECD Convention on Combating Bribery

The 1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions is a legally binding international agreement and represents an instrument primarily focused upon the 'supply side' of corruption transactions. In defining and criminalising the act of bribing foreign officials, the Convention makes bribery a predicate offence. Member signatories are obliged to establish the illegality of the bribery of public servants within their national legal frameworks in tandem with the means and measures to 'prevent, detect, investigate, prosecute and sanction foreign bribery'[69].

In terms of the Convention's scope, signatories are obliged to introduce effective, proportionate and dissuasive criminal and non-criminal sanctions[70] for both natural and legal persons. Furthermore, a broad interpretation of the territorial

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67   Venezuela appears has presented particular opposition to the Convention's implementation. On three consecutive occasions, the Venezuelan government has vetoed the participation of civil society in the monitoring process.

68   See www.transparency.org/news_room/latest_news/press_releases/2010/2010_03_24_oea_venezuela_english

69   See http://www.oecd.org/document/13/0,3343,en_2649_34859_39884109_1_1_1_1,00.html

70   Ibid.

basis for jurisdiction removes the burden of proving an extensive physical connection to the act of bribery and prescribes inter-signatory consultation in the event of alleged offences occurring across multiple party states. Further inter-member consultation is encouraged via the prescribed provision of legal assistance to other countries investigating bribery allegations.

The Convention also emphasises the necessary measures to enable the seizure and confiscation of bribes, proceeds of bribes, or other property having equivalent value. With regards to prosecution, the Convention ensures that the rules and principles that apply to the bribery of national public officials also apply in transnational cases.

In terms of geographical coverage the majority of the thirty-eight signatories are, as perhaps expected, represented by OECD members, with the exception of seven non-member countries (Argentina, Brazil, Bulgaria, Chile, Bulgaria, Estonia, Slovenia and South Africa).

The OECD appears to continue to enjoy considerable support—an achievement made evident by the fact that all thirty-eight signatories have recently adopted the 2009 Anti-Bribery Recommendation. The recommendation both reaffirms the determination of signatories 'to enhance the ability of the thirty-eight States Parties to the Anti-Bribery Convention to prevent, detect and investigate allegations of foreign bribery' and includes the Good Practice Guidance on Internal Controls, Ethics and Compliance'.

With regards to implementation and monitoring, the OECD Convention establishes a programme of systematic follow-up to monitor and promote the full implementation of the Convention. This is undertaken within the framework of the OECD Working Group on Bribery in International Business Transactions[71]. The Working Group's follow-up includes regular reviews, performed in two phases: Phase One evaluates the adequacy of a country's legislation to implement the Convention, and Phase Two assesses whether a country is applying this legislation effectively. Of note is that the monitoring mechanism is both open ended and peer-driven; participating delegates are not only subject to evaluation but are also expected to act as evaluators. The report and recommendations are then forwarded to the government of each participating country for follow-up. While this monitoring mechanism appears robust, a highly critical OECD report released this month and summarised below draws attentions to the lack of active enforcement by the majority of parties—a deficit that is endangering the principle of collective engagement.

Box 7: OECD Progress Report July 2010—Enforcement of the OECD Anti-Bribery Convention

Current Levels of Enforcement are too Low to Enable the Convention to Succeed
With active enforcement in only seven of the thirty-eight parties to the Convention, the Convention's goal of effectively curbing foreign bribery in international business transactions is still far from being achieved. The current situation is unstable because the Convention is predicated on the collective commitment of all the parties to end foreign bribery. Unless enforcement is sharply increased, existing support could well erode. Danger signals include efforts in some countries to limit the role of investigative magistrates, shorten statutes of limitations and extend immunities from prosecution. The risk of backsliding is particularly acute during a time of recession when competition for limited orders is intense.

Cause of Lagging Enforcement: Lack of Political Will
The principal cause of lagging enforcement is lack of political will. This can take a passive form, such as failure to provide adequate funding and staffing for enforcement. It can also take an active form through political obstruction of investigations and prosecutions. The lack of political will must be forcefully confronted not only by the Working Group on Bribery but also by the active involvement of the OECD Secretary-General as well as high-level pressure on the laggards from governments committed to enforcement.

1.3.3 The Council of Europe Criminal Law Convention on Corruption

The Council of Europe Criminal Law Convention on Corruption came into force in 2002. It aimed to establish a regional consensus on Member States' responsibilities in the spheres of criminalisation and international co-operation with specific focus on corruption.

The Convention criminalises a wide range of corrupt behaviours, for which States Parties are required to provide effective, proportionate, and dissuasive sanctions and measures, including imprisonment. The criminalised activities include:

- Active and passive bribery of domestic and foreign public officials;
- Active and passive bribery of national and foreign parliamentarians and members of international parliamentary assemblies;
- Active and passive bribery in the private sector;
- Active and passive bribery of international civil servants;

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71   See http://www.oecd.org/document/5/0,3343,en_2649_34859_35430021_1_1_1_1,00.html

- Active and passive bribery of domestic, foreign and international judges and officials of international courts;
- Active and passing trading in influence;
- Laundering of the proceeds of corruption offences; and
- Accounting offences (invoices and accounting documents) connected with corruption offences.

Furthermore, the Council of Europe's Convention is the first attempt to define common international rules in the field of civil law and corruption. It requires States Parties to 'provide in their domestic law for effective remedies for persons who have suffered damage as a result of acts of corruption, to enable them to defend their rights and interests, including the possibility of obtaining compensation for damage'[72].

The Convention proposes the following remedies:
- Compensation for damage, including the provision—for persons who have suffered damage—of the right to initiate an action to obtain full compensation;
- Liability, including State liability for acts of corruption committed by public officials;
- Reduction or disallowance of compensation when the plaintiff contributes to the damage;
- Invalidity of contracts or clauses of contracts providing for corruption;
- Protection of employees who report corruption;
- Enhancement of clarity and accuracy of accounts and audits;
- Acquisition of evidence in corruption related civil proceedings; and
- Precautionary measures to preserve the rights and interests of the parties during corruption-related civil proceedings.

The Convention does not contain any specific provision on anti-corruption policies, action plans or bodies. However, it does require States Parties to adopt the necessary measures to ensure that independent persons or entities are specialised in the fight against corruption, and that the staff of such entities have adequate training and financial resources. Part of the Convention focuses specifically on the assets and proceeds of corruption with States Parties required to criminalise money laundering. Signatories are also required to take appropriate measures to identify, trace, freeze and seize the proceeds of corruption and—with respect to money laundering—to comply with the provisions of the Convention on Laundering, Search, Seizure and Confiscation of the Products from Crime.

The Additional Protocol to the Criminal Law Convention on Corruption extends the scope to arbitrators in commercial, civil and other matters as well as to jurors, thus complementing the Convention's provisions aimed at protecting judicial authorities from corruption. States Parties to the Protocol must therefore adopt the necessary measures to establish the active and passive bribery of domestic and foreign arbitrators and jurors as a criminal offence.

Following the negotiation process, forty-six Member States, in combination with several observer states, saw the Convention enter into force in 2002. Observers recognise that the Convention represents a regional agreement of a joint framework to address corruption.

Implementation of the Council of Europe's Convention on Corruption is monitored by the Group of States against Corruption (GRECO). GRECO monitors the observance of the Guiding Principles in the Fight against Corruption and the implementation of the related legal instruments via a process of mutual evaluation and peer pressure. One of its strengths, in comparison to the other mechanisms, is that the implementation of its recommendations is examined by way of a compliance procedure. In addition, GRECO foresees the need for a special procedure to deal with members whose response to its recommendations has been found to be globally unsatisfactory.

The Convention's shortcomings appear to centre upon its lack of preventative measures, lack of provisions on statutes of limitation, and the fact that parties are permitted to make reservations to the Convention across some provisions.

1.3.4 *The Council of Europe Civil Law Convention on Corruption*

The Council of Europe Civil Law Convention on Corruption is the first attempt to define common international rules in the field of civil law and corruption. It requires States Parties to 'provide in their domestic law for effective remedies for persons who have suffered damage as a result of acts of corruption, to enable them to defend their rights and interests, including the possibility of obtaining compensation for damage'[73].

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72   *'Civil Law Convention on Corruption', 1999.*

73   *Article 1, 'Civil Law Convention on Corruption'.*

The Convention[74] deals with the following remedies:

- Compensation for damage, including the provision—for persons who have suffered damage—of the right to initiate an action to obtain full compensation;
- Liability, including State liability for acts of corruption committed by public officials;
- Reduction or disallowance of compensation when the plaintiff contributes to the damage;
- Invalidity of contracts or clauses of contracts providing for corruption;
- Protection of employees who report corruption;
- Enhancement of clarity and accuracy of accounts and audits;
- Acquisition of evidence in corruption related civil proceedings;
- Precautionary measures to preserve the rights and interests of the parties during corruption-related civil proceedings.

1.3.5 The African Union Convention on Preventing and Combating Corruption

Adopted by the Second Ordinary Sessions of the assembly of the Union in Maputo, Mozambique in 2003, the African Union Convention[75] on Preventing and Combating Corruption entered into force on 5 August 2006.[76] The Convention set out to establish an African consensus on African Union (AU) member states' understandings, responsibilities and obligations regarding corruption, and more specifically, areas of corruption offences, notably illicit enrichment, money laundering and concealment of property. This consensus appears to be based on efforts to prevent corruption and establish continent wide, consistent legal frameworks with particular regard to the public sector.

Significantly the Convention omits a definition of corruption but explicitly recognises particular acts of corruption and related offences to which its provisions apply. The convention considers mandatory the treatment of the following acts as corruption offences:
- Active and passive bribery of national public officials;
- Active bribery of foreign and international public officials;
- Embezzlement, misappropriation or other diversion of property by a public official; and
- Laundering of the proceeds of corruption.

Interestingly, however, the African Union (AU) Convention differs from UNCAC in that it also includes the following acts as mandatory that the UNCAC does not:
- Passive bribery of foreign and international public officials;
- Active and passive bribery in the private sector;
- Trading in influence;
- Embezzlement, misappropriation or other diversion of property in the private sector; and
- Illicit enrichment.

Beyond the definitions of corruption-related offences, the level of obligation within the Convention is primarily via mandatory provisions.

The Convention provides a set of provisos that must be integrated when developing any Codes of Conduct for public officials. In addition, the Convention proposes that a special control body be established and charged with developing and monitoring the implementation of codes of conduct, as well as serving to raise awareness, and where necessary provide training for public officials on ethical good-practice.

Provisions dedicated to anti-corruption are primarily represented by Anti-Corruption Bodies. The Convention provides for establishing, maintaining and strengthening independent national anti-corruption authorities or agencies. However, it does not prescribe the responsibilities of these bodies in detail.

The Convention's attention to public procurement and public financial management again echoes the UNCAC, since both call for establishment of systems to ensure effectiveness and transparency. While the provisions of the AU Convention are succinct, those of the UNCAC are more elaborate and detailed. With regards to public procurement, both Conventions require that preventive measures be taken to ensure that procurement is based on competition and objective criteria; that invitations to tender, conditions for participation and award criteria be publicised; that systems of review and appeal be instituted; and that the personnel in charge of public procurement be trained and declare their interest.

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74 Articles 3-11.

75 It is important to recognise that both the Southern African Development Community (SADC) Protocol against Corruption (2001) and the Economic Community of West African States (ECOWAS) Protocol on the Fight against Corruption (2001) were pioneering predecessors to this important regional convention. However, the protocols have had mixed results with the SADC Protocol being signed in 2001 as the first sub-regional anti-corruption treaty in Africa, while the ECOWAS Protocol remains yet to be signed.

76 To date, thirty-one Member States have ratified and are state parties to the Convention

The Convention puts greater emphasis on dealing with the proceeds of corruption and requires that States Parties enact laws to empower their courts and other relevant authorities to order the confiscation or seizure of banking, financial or commercial documents with a view to implementing the convention. Furthermore, the Convention requires legislative and non-legislative measures to establish conversion, transfer and disposal of proceeds of corruption; their concealment or disguise; and their acquisition, possession or use, as criminal offences.

The Convention's scope again overlaps with the UNCAC since both oblige signatories to establish jurisdiction over offences committed in their territories—either by their nationals or foreign residents or against them. In order to eliminate safe havens for criminals, both conventions make provision for States Parties to obtain jurisdiction in countries where the offences committed are criminalised under domestic laws but where extradition is not allowed by law.

The Convention sets out a framework[77] for a follow-up mechanism. The First African Union Advisory Board on Corruption was elected by the 14th Ordinary Session of the Executive Council in January 2009. The main mandate of the Board is to promote and encourage the adoption of measures and actions by States Parties to prevent, detect, punish and eradicate corruption and related offences in Africa as well as to follow-up on the application of those measures. The Board's responsibilities include promoting anti-corruption work, collecting information on corruption and on the behaviour of multinational corporations working on the African continent, developing methodologies, advising the governments of the States Parties on the implementation of the convention, developing codes of conduct for public officials and building partnerships.

States Parties are required to regularly submit a report detailing progress achieved in compliance with the Convention's provisions to the AU's Executive Council. Moreover, the national anti-corruption authorities of the States Parties must report to the Advisory Board on an annual basis with regard to progress made in the implementation of the convention. The States Parties are also requested to build partnerships with the African Commission on Human and Peoples' Rights, African civil society, and governmental, intergovernmental and non-governmental organisations in order to facilitate dialogue in the fight against corruption and related offences.

1.4 Practical guidance on how to use the conventions in EU work with partner countries

Key points:

- The EU should make signing all relevant conventions part of its dialogue with the governments of partner countries.
- The EU should ensure that partner countries understand their responsibilities before and after 'entry into force' of the convention.

The following are the steps that lead from the negotiation of a convention and its actual implementation by States Parties[78]:

Negotiation
The negotiation of a convention is usually carried out by States within an institutional framework. This step has been completed for all the conventions covered in this chapter. There is, therefore, no role for the EU to play.

Adoption
After the negotiation of the content and form of the convention have been agreed, the States express their consent by formally adopting the convention in a formal meeting. This step has also been completed for all the conventions presented in this concept paper. There is, therefore, no role for the EU to play.

Signature
After its adoption, the convention is opened for signature by States. By signing the convention, States indicate their intent to become Parties. This is usually the responsibility of the executive branch of government. There is normally a time limit to the signature of a convention. After that, States become Parties by accession. While most countries have

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77 Article 22

78 The following explanation of the steps is summarised from Dell, G., 2006. 'Anti-corruption conventions in Africa: What civil society can do to make them work', Berlin: Tranparency International, available at http://www.tranparency.org

signed the UNCAC[79] and the IACAC[80], a few member countries of the Council of Europe[81] and the African Union[82] are still to sign respectively the relevant Council of Europe and AU Conventions. In a country that has not signed yet the relevant conventions, the EU should make this issue part of its dialogue with the government. A joint approach involving other donors and the non-state actors should be supported by the European Commission and EU staff in delegations to lobby the government. For example, the OECD[83] is particularly concerned by the non-participation of China, India and Russia to the Anti-Bribery Convention, and a joint dialogue with these countries may be promoted on this issue.

Ratification or Accession

To commit itself to implementing the obligations of a given convention, a State must first ratify or accede to it. Ratification and accession procedures vary from country to country and are determined with reference to specific national laws. They may involve the enactment of national legislation or publication in the national gazette. Ratification refers to the act of accepting to become a party to a convention before it comes into force, while accession is the act of accepting to become a party to a convention after it has come into force. Through these acts of ratification and accession, a country becomes a States Party to the convention and is thereafter bound by its requirements. While most States have ratified the UNCAC, a number of African Union members still remain to ratify the AU Convention[84]. Once it has been established that a particular country has not ratified or acceded to a given convention, the EU acting jointly and in coordination with other donors should include this issue in their dialogue with the relevant representatives. For the EU and other donors to have an impact in this respect it is necessary to undertake an analysis of the ratification or accession process, identify possible obstacles and find ways to influence the process. The EU should also give support to the lobbying activities of non-state actors.

Deposit of Instruments of Ratification or Accession

This is the step at which the State deposits an instrument of ratification or accession with the relevant institution designated in the convention. As many countries that ratify or accede to a convention take time to deposit the relevant instrument; the EU, working with other donors, may include this issue in its dialogue. It should also support the lobbying activities of the non-state actors to this end.

Entry into Force

A convention becomes binding for States Parties only from the time it enters into force. The number of required ratifications for entry into force is normally specified in the convention. It is important that the EU and other donors discuss in detail with partner states what their responsibilities will entail prior to and after the 'entry into force' of conventions. They should also support the efforts by non-state actors to explain to the public and the relevant institutions what the obligations of their countries are under the convention and what needs to be done next.

National Implementation into Law

It is advisable that States Parties review the consistency of their national legislation with the provisions of a given convention either before or after ratification or accession. In some countries, a ratified convention becomes automatically part of domestic law. In others it is normal practice to amend or supplement the existing legislation in order to take into account the provisions of the convention without invoking its specific terms. In a further group of countries, the convention is incorporated or adopted into domestic law but its terms are kept intact. A substantial amount of work is required in partner countries to translate the provisions of the various conventions into domestic law and practice. The EU, in conjunction with other donors, notably UNODC, should include in its dialogue the implementation of the convention to which the country is party. Technical support in the form of legal experts and mentors is needed in support of the relevant institutions of the partner countries that lack national expertise in this area. In some African and Latin American countries interpretation of the provisions of regional conventions to which the countries are party, as well as those of the UNCAC, needs to be undertaken by experts. The relevant experts could be provided by the EU and other donors to countries that lack such expertise. Support needs to be given also to non-state actors with a view to enabling them to carry out their own research on the consistency and congruence between existing national legislation and the terms

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79 As of November 2009, 140 countries had signed the UNCAC. Up-to-date information on signatures and ratifications of the UNCAC is available at http://www.unodc.org/unodc/en/treaties/CAC/signatories.html

80 As of November 2009, the only non-member country in the American Continent is Cuba. Up-to-date information on signatures and ratifications of the IACAC is available at http://www.oas.org/juridico/english/Sigs/b-58.html

81 As of November 2009, all Member States of the Council of Europe except Liechtenstein have signed (or ratified) the Criminal Law Convention on Corruption. Belarus, Mexico and the United States are the only non-Member signatories. For up-to-date information on all signatures and ratifications, see http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=173&CM=1&DF=17/11/2009&CL=ENG . Liechtenstein, Monaco, Portugal, Russia, San Marino and Switzerland have not signed the Civil Law Convention on Corruption. Belarus is the only non-Member signatory. For up-to-date information on all signatures and ratifications, see http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=174&CM=1&DF=17/11/2009&CL=ENG

82 As of November 2009, forty-three out fifty-three members of the AU have signed the AU Convention. For up-to-date information on signatures and ratifications of the AU Convention see the website of the organisation at http://www.africa-union.org/root/au/Documents/Treaties/List/African%20Convention%20on%20Combating%20Corruption.pdf

83 The OECD Convention has been ratified by thirty-eight States (member and non members of the OECD). For up-to date information on the status of ratifications, see http://www.oecd.org/dataoecd/59/13/40272933.pdf

84 As of November 2009, 141 countries have ratified the UNCAC and only thirty-one out of fifty-three member countries of the African Union have ratified the AU Convention.

imposed by the convention to which the country is party. They would thus be able to influence the relevant institutions to aim for the highest standards in the implementation of the convention(s).

Wider Integration into Institutional Structures, Policy and Practice

Besides changes to the national legislation, States Parties need to make changes to their institutions, policies and practices that would enable them to effectively implement the convention(s). Financial resources will need to be found to set up, staff and equip these transformed or new institutions, implement the new policies, and apply the new practices and policies. The EU, alongside other donors could provide the funding for providing relevant expertise in these areas to partner countries. They should also provide the necessary support to non-state actors to do research on the appropriate policies, practices and institutions and their lobbying of the relevant institutions.

Monitoring mechanisms

The participation of partner countries in the monitoring mechanisms of various conventions to which they are party is very important, as they ensure that States Parties live up to their commitments. The intergovernmental reviews proposed by some of the conventions entail providing material and financial support to the reviewing body and for collecting the relevant information and data for the review. As many of the partner countries are parties to more than one convention they need to comply with several review mechanisms, which can stretch their resources to the limit. The EU and other donors can provide the necessary support to enable these countries to fully participate in, and comply with, these monitoring mechanisms. Support is also needed to implement the reforms or changes proposed by the reviews. Non-state actors also need support in order for them to contribute effectively to the development and implementation of the review processes. They also need support to carry out their own independent reviews and to publicise their results.

Box 8: Implementation of international anti-corruption conventions - Areas needing financial and technical support

- Awareness-raising—encouraging partner countries to sign, ratify or accede to the instruments;
- Integration of the provisions of the international legal instruments into national legislation;
- Implementing the necessary institutional reforms to meet the standards set in the legal instruments; and
- Establishing monitoring mechanisms by peers and civil society.

Among other recommendations, it should be highlighted that UNCAC provides concrete area of interventions that are considered as entry points for European Commission assistance and policy dialogue. Moreover, it is essential to stress that the UNCAC review mechanism will provide useful information for design external assistance programmes in that field.

It needs nevertheless to be stressed that while not existing as mandatory clauses for the UNCAC reviews, the participation of civil society; the publication of the reports; and the possibility for reviewers to make country visits, are key elements that could contribute to effective implementation of the convention. The importance of these further provisions is particularly relevant considering their usefulness to other, complementary instruments such as the Kimberley Process (See Below).

It will also have to be made clear that, when providing assistance to countries for domesticating or implementing these conventions, a degree of synergy will have to be ensured due to their frequently overlapping content and geographic coverage.

1.5 International initiatives: Indirect instruments helping in the fight against corruption

The management of natural resources represents a major challenge since it is particularly prone to corruption. Recent research[85] suggests that where country elites have access to 'unearned income' in the form of natural resources, their interest in nation building has been eroded, and corruption, state fragility and conflict are more likely to occur. Moreover, since many of the partner countries of the EU are rich in natural resources, natural resource management (and its relationship with corruption) is of great importance to the nature of the assistance provided by the EU to these countries in the fight against corruption.

The risk of corruption pervades the value chains of all sorts of natural resources, particularly the 'extractive industries' such as oil, gas, minerals and timber. Both the exploitation of natural resources and the management of public revenues from the extractive industries are vulnerable to capture by elites from the public and private sector. They have also been a key factor in many armed conflicts owing to the many rebel forces fighting for control of mining or logging areas as a means to generate financial resources to fund their activities.

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85 Moore, M., Schmidt, A. & Unsworth, S., 2009. 'Assuring our Common Future in a Globalised World: the global context of conflict and state fragility', unpublished.

With few exceptions, most resource-rich developing countries experience low or even negative growth and therefore high levels of poverty. This paradox of richly endowed but economically under performing countries has been dubbed the 'resource curse'[86]. At the root of this problem is weak governance and lack of accountability in management of revenues accrued by elites from the exploitation of natural resources.

In essence, it is argued that natural resources relate to corruption in two ways. Firstly, the existence of natural resources raises the possibility that various competing social and political groups may attempt to gain control over them to facilitate rent-seeking. In other words, these groups may take control of the revenues from exploiting local natural resources and redistribute them for private benefit. Secondly, the institutional arrangements relating to natural resource management may provide opportunities for corrupt activity.

The literature shows that it is not necessarily the presence of natural resources by themselves that leads to the resource curse, but the likelihood of such resources being exploited to greater facilitate processes of patronage and rent-seeking by opportunistic institutions. Researchers argue that the most important institutions are those responsible for the allocation of public revenues and those which hold politicians to account for their management of public funds and thus restrict the possibilities of state-capture by governments. There is also strong evidence to suggest the importance of institutions that facilitate private sector efficiency and thus reduce the attractiveness of private capture. Bearing this in mind, it has been observed that in countries where governments alone control considerable revenues from natural resources, they are likely to reduce or even ignore pressures for improved governance and accountability. They may also undertake to suppress or even prevent the formation of groups capable of challenging their control of power.

Corruption occurs at all stages of natural resource management, but it manifests itself in ways that vary from one resource to the next. Moreover, various actors who are involved in the different stages play an important role in either grabbing public revenues or preventing corrupt behaviour. These players include civil servants, domestic and foreign based enterprises, commercial and development banks, consultants, export credit agencies, donors and insurance companies. The influence that each one of these actors enjoys depends on the type of relationship that they have with the government and with each other. Even where robust natural resource management systems are put in place, there may be strong incentives for by-passing them if this can be done with impunity and the pay-off is high.

A number of initiatives have been developed over the last few years to address the problems of governance and corruption that resource-abundant countries face. Some of the main initiatives are summarised below.

1.5.1 The Extractive Industries Transparency Initiative

The Extractive Industries Transparency Initiative (EITI) was launched in 2002 by a coalition of governments, companies, non-state actors, investors and international organisations[87]. The EITI is a voluntary initiative aimed at improving governance in countries endowed with oil, gas and minerals through the verification and publication of company spending and government revenues from the extractive industry sector—with a view to ensuring that natural resources benefit all.

In order to improve transparency in governance, EITI advocates the publication and verification of company payments and government receipts from the natural resource management process within the relevant extractive industries. For the first time, this procedure opens the books of both extractive industry companies and states that enter into business relationships with them. This newfound transparency has meant that considerable 'leakages' of funds that were previously diverted during the collection of revenues in countries with weak regulations and low levels of accountability are now harder to justify. EITI has thus introduced an international standard on transparency and good governance in the management of revenues from extractive industries.

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86 See Kolstad, I. & Wiig, A., 2008. 'Political economy models of resource curse: implications for policy and research', CWI Working Paper, WP 6, available at http://www.cmi.no/publications/file/?3291=political-economy-models-of-the-resource-curse ; and Collier, P. & Goderis, B., 2007. 'Commodity prices, growth, and the natural resource curse: Reconciling a conundrum', Paper 274, The Centre for the Study of African Economies Working Paper Series: Oxford University, available at http://www.csae.ox.ac.uk/members/biogs/goderis/pdfs/workingpapers/CommodityPricesGrowth.pdf

87 See http://www.eitransparency.org

Box 9: The EITI Process

EITI is a global initiative that aims to increase transparency in transactions between companies operating in the extractive sector and governments as a way of ensuring that revenues from the extractive sector contribute to sustainable development and poverty reduction. The full publication and verification of company payments and government revenues helps stakeholders (including extractive companies, home countries where the extractive companies are resident, and NGOs and other interested actors) to address issues of systemic corruption, poor governance, poverty and conflict.
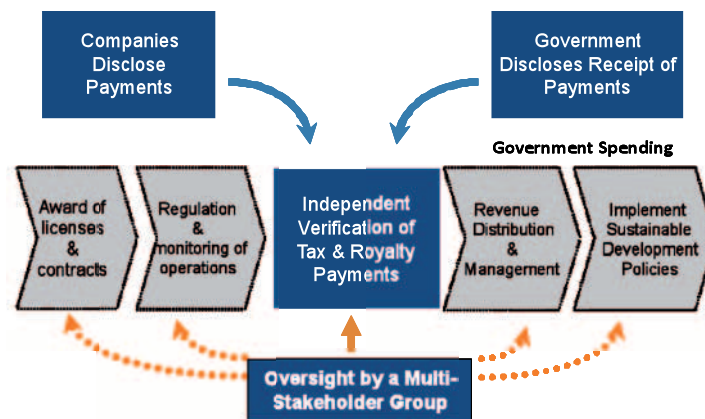
This process of disclosure and independent verification is overseen by a Multi-Stakeholder Group, as illustrated in the diagram. This oversight and scrutiny may lead to additional changes outside of the EITI process, such as a review of the award of licences and contracts, closer regulation and monitoring of operations or to a change in the distribution and management of revenue from the sector.

A great deal of the work of donors and international organisations is carried out within the framework of EITI and its related activities. EITI's transparency activities in countries that have volunteered to join the initiative are supported by a Multi-Donor Trust Fund which has received contributions from the World Bank, the European Commission, and the governments of the United Kingdom, the Netherlands, Germany, Norway, France, Australia, Belgium, Canada, Spain and the United States of America.

In terms of coverage, the EITI currently has about thirty candidate countries and two compliant countries; Guinea has recently (December, 2009) voluntarily suspended its candidate status due to a non-permissive political environment. However, twenty two countries have yet to meet their 2010 deadline for external process verification.

While broadly considered a successful instrument, EITI has been criticised for focusing primarily on the transparency of revenue collection, whereas other areas where transparency is equally important (e.g. procurement) are not addressed. Although it carefully charts revenues entering state accounts, it does not deal with the allocation and expenditure of revenues from extractive industries despite these expenditure streams being vulnerable to capture by powerful groups.

The EITI appears to have since recognised the importance of transparency on the expenditure side of revenue management as crucial to restricting the misallocation of public funds. The EITI+ initiative, launched by the World Bank in 2008, recognised the importance of transparency on the 'downstream' government expenditure side and goes one step further by extending the scrutiny across the entire value-chain of the EITI process.

The second report covering 2005 was released on 11 August 2009. The report identified unprecedented financial discrepancies, unpaid taxes and system inefficiencies. Over US$800m of unresolved differences between what companies said that they paid in taxes, royalties and signature bonuses, and what the governments said it received were identified. Of this amount, US$560m was identified as shortfalls in taxes and royalties owed to the government and around US$300m in payment discrepancies relating to signature bonuses, payments of dividends, interest and loan repayments. The largest amount owed to the government in the report is an estimated US$4.7bn by the state-owned Nigerian National Petroleum Corporation (NNPC) for payments of domestic crude. However, the NNPC claims it is owed US$1.7bn in subsidies from the government.

Box 10: Nigeria EITI

Former President Olusegun Obasanjo committed to EITI in November 2003 and launched Nigeria EITI (NEITI) in February 2004. Under this Presidential Directive, an inaugural NSWG was constituted, consisting of twenty-eight individuals led by the then Minister of Solid Minerals. To give legal backing to the work of NEITI, a bill was introduced to the National Assembly in December 2004. The NEITI Act, which passed in May 2007, institutionalised NEITI and made Nigeria the first EITI implementing country to provide a legally enshrined framework for EITI. By virtue of the NEITI Act, NEITI became both a formal government agency under the Presidency as well as a country chapter of global EITI. The NEITI Act combines its international responsibilities under the EITI with its national legal mandate and policy agenda. The latter expands the scope of the initiative beyond that of the global EITI framework to include, most notably, physical and process audits in addition to financial audits of the extractive sector.

The 2007 NEITI Act dissolved the inaugural National Stakeholders Working Group (NSWG) and empowered the President of Nigeria to reconstitute the NSWG and appoint new membership of fifteen individuals and a new NSWG was inaugurated in January 2008. As a result of ongoing civil society organisation (CSO) concerns about under representation on the NSWG, a civil society steering committee (CSSC) was established. The CSSC includes four members of the NSWG and representatives from different CSO sectors (professional organisations, gender, transparency and accountability, environment, physically challenged groups, media and youths).

1.5.2 The Kimberley Process Certification Scheme (KPCS)

In the 1990s, the diamond trade was unregulated and with approximately twenty-five per cent of the diamonds traded on the international market originating from conflict-ravaged areas, mainly in Africa. These 'blood diamonds' were used in various illicit and criminal activities, including money laundering, tax evasion, drug trafficking, arms trading with rebel groups, sanctions evasion and the financing of terrorism. The wars sustained by the trade in blood diamonds by rebel groups caused a great deal of suffering and the death and displacement of millions of innocent civilians. Furthermore, already fragile states were unable to generate legitimate revenues from the industry that could have helped develop their economies and bring millions of their citizens out of poverty.[88]

Following a landmark UN resolution supporting an international rough diamond certification scheme, southern African states met in Kimberley, South Africa in May 2000 to reflect upon ways to put an end to the conflict diamond trade and ensure that the diamond industry did not fund violence and human rights violations. This was followed by the adoption of a United Nations General Assembly resolution in December 2000 that called for the creation of an international certification scheme for rough diamonds. Following negotiations between governments, the international diamond industry and non-state actors, the KPCS was created in November 2002 and entered into force in January 2003.

The KPCS demands that participating countries meet minimum requirements and set in place a legal and institutional framework to effectively control the diamond trade. This framework must include relevant national legislation and institutions and controls on imports, exports and internal diamond trade. Participating countries are also obliged to commit to transparency and exchanges of statistical data with other participating countries.

In trading terms, certificated countries can only trade with other participants who fulfil the requirements of the KPCS. All rough diamond exports must be accompanied by a KP certificate that guarantees they were not produced in conflict-ridden areas. Compliance with the requirements of the scheme is monitored through 'review visits', annual reports and the regular exchange and analysis of statistical data on diamond production and trade.

To date, the Kimberley Process has forty-nine members who represent seventy-five countries. The EU and its Member States actively participate in the KPCS and count as an individual participant[89]. These countries account for almost all rough diamond production in the world (99.8%). In addition, the international diamond industry—represented by the World Diamond Council—and non-state actors—represented by Global Witness, Fatal Transactions and Partnership Africa-Canada—play an active and important role in this tripartite initiative. The participating countries rotate as chairs of the KPCS. The EU chaired the KPCS in 2007 and chairs one of its working groups, the Working Group on Monitoring, which is responsible for overseeing the implementation of KPCS requirements.

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88   KPCS, 2010. http://www.kimberleyprocess.com, the website of Partnership Africa Canada at http://www.
     pacweb.org/programs-resources-e.php and that of Fatal Transactions at http://www.fataltransactions.org/
     Dossiers/Blood-diamonds-and-the-Kimberley-Process/Introducing-the-Kimberley-Process

89   Within the EC, the Kimberley Process is implemented by a Council Regulation. The relevant legislation
     may be found at http://ec.europa.eu/external_relations/blood_diamonds/index_en.htm

The KPCS has had some success in stemming the flow of conflict diamonds, which has contributed to restoring peace and stability in a number of diamond-producing countries. As a result, over the last few years the diamond revenues of these countries have grown substantially. However, in the run-up to its latest plenary session in Windhoek, Namibia, in November 2009, non-state actors recommended a number of actions to be taken to further strengthen the controls and improve the implementation of KPCS standards[90].

Many view the KPCS as an exemplary model of a successful voluntary union of governments, a large international industry and civil society. The Kimberley Process institution claims to have not only 'stemmed [the] flow of conflict diamonds' but also to have engineered 'a unique conflict-prevention instrument to promote peace and security'.

This evaluation of the success of the Kimberley Process is widely shared and has been similarly supported by an external review, which described it as, 'international co-ordination at its best, in the form of a novel voluntary model for multilateral agreement and action'. However, future challenges for the KPCS have been identified, particularly with regards to the challenging but necessary transition it needs to make from a voluntary system to an enforceable one.

Box 11: European Commission Participation in the Kimberley Process

The European Commission is committed to supporting international initiatives, such as the Kimberley Process, to combat the role of conflict resources. To that end, the Commission, representing the EU as a whole, is an active participant in the KPCS and chaired the Kimberley Process in 2007. The Commission chairs the Kimberley Process Monitoring Working Group that supervises KPCS implementation globally. The Commission has also funded projects to enable statistical analysis, satellite monitoring and technical expertise in order to enhance the capacity of the Kimberley Process to respond to crises, for example, the cases of Côte d'Ivoire and Zimbabwe. Within the EU, the KPCS is implemented by a Council Regulation adopted on 20 December 2002. The Regulation lays down the procedures and criteria to be followed in the import and export of rough diamonds into and from the EU and creates a uniform Kimberley Process certificate, which is used for all shipments.

Given that much of the KPCS success is owed to its voluntary and ad-hoc nature, this could yet prove problematic, since compliance issues are likely to require enforcement where chronic underperformers fail to meet standards. Given their volunteer status, this is likely to prove challenging.

1.5.3 Forest Law Enforcement, Governance and Trade

Many partner countries are suffering the effects of the devastation that is visited upon them by illegal logging. Large areas of their forests have been destroyed, affecting millions of people whose livelihoods depend on timber and non-timber forest products. Conflicts for control of the revenues gained through illegal exploitation of forests often lead to human rights violations and can also fuel corruption in the affected countries. As a result, considerable public resources are diverted by corrupt officials, criminal networks and rebel groups and are thus made unavailable for maintaining the essential functions of the state (infrastructure, social protection, health, education, etc.) or for the effort to reduce poverty.

Responding to public concerns on the issue of illegal logging and deforestation, an EU Action Plan for Forest Law Enforcement Governance and Trade (FLEGT) was adopted in 2003. The intended impact of FLEGT was to reduce illegality in the international timber sector, improve governance in the forestry sector of timber producing nations and encourage importers to take responsibility for ensuring a credible verification process.

The key regions and countries targeted, together accounting for nearly sixty per cent of the world's forest and a large proportion of internationally traded timber are Central Africa, Russia, Tropical South America and Southeast Asia. The FLEGT Action Plan was endorsed by the EU Council of Ministers in November 2003, leading to two key pieces of legislation: the FLEGT Regulation of 2005 and the EU Timber Regulation of 2010.

FLEGT gave explicit recognition of a number of measures that the EU and its Member States could take to reduce illegal logging of the forests of developing countries. The actions are aimed at:

- Strengthening governance and capacity building in timber-producing countries;
- Strengthening law enforcement through better coordination and collaboration between forest regulators, police, customs and judiciary;
- Involving the private sector in efforts aiming at reducing opportunities to trade in illegal timber; and
- Providing capacity building support to the development and enforcement of transparent public procurement policies

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90   See their press release 'Blood diamonds—time to plug the leaks. Civil society groups warn Kimberley Process effectiveness compromised', available at http://www.pacweb.org/Documents/Press_releases/2009/Blood_Diamonds-time-to-plug-the-leaks-eng-2009-06-19.pdf   Their concerns are summarised in Partnership Africa Canada, Diamonds and Human Security—Annual Review 2009, available at http://www.pacweb.org/Documents/annual-reviews-diamonds/Ar_diamonds_2009_eng.pdf

and accurate recording of forest ownership data, concession systems and licences, and legal frameworks[91].
A central element of FLEGT are the bilateral agreements known as Voluntary Partnership Agreements (VPAs) between the EU and tropical timber producing nations that choose to undertake the Action Plan.

While the VPAs are generally regarded as an efficient instrument capable of improving governance within forestry sectors and reducing illegality within the international timber trade, concerns, such as those raised in a series of Policy Briefs by Global Witness[92], have been raised over their implementation. However, many of these concerns are likely to be addressed by forthcoming demand-side measures adopted by EU countries, in combination with the EU Due Diligence Regulation, which enables operators to ascertain the legality of their products, and the ISAs Lacey Act Amendment (2008), which opened the way for prosecution in the US for importing illegal timber via a Congressional law banning commerce in illegally sourced plants and their products.

Box 12: Due Diligence Regulation

Due Diligence regulation has been adopted by the European Parliament and the Council of 20 October 2010, under which timber importers who place timber and wood products onto the European market are prohibited from selling illegally harvested timber and timber products. They are also obliged to use a due diligence system to ensure the legality of these timber products. This system requires them to compile information concerning their timber, including where it was harvested. This regulation requires traders selling internally within the EU to also provide information on their suppliers and to ensure the traceability of timber and timber products up to the first point of sale within the EU.

Box 13: EC specific regulations, licensing and enhancements

In 2005, the Council adopted a Regulation allowing for the control of the entry of timber to the EU from countries entering into bilateral FLEGT Voluntary Partnership Agreements (VPA) with the EU (Council Regulation (EC) No 2173/2005 of 20 December 2005 on the establishment of a FLEGT licensing scheme for imports of timber into the European Community). In 2008, a further enhancement was presented with a draft legislation which will oblige traders to identify the country of origin of their timber and ensure that timber they sell has been harvested according to the relevant laws of that country.

In reviewing implementation, the first FLEGT VPA was ratified with Ghana in November 2009 and initialled with Congo in May 2009. Negotiations are ongoing with countries in South East Asia, Africa and South America. The first FLEGT licences are expected in 2011.

1.5.4 Construction Sector Transparency Initiative

Public sector infrastructure projects contribute to economic growth and poverty reduction. As it is a case for natural resources management, corruption during the planning, implementation and monitoring of construction operations is heavily negatively impacting their expected societal returns.

Launch in May 2008, the Construction Sector Transparency Initiative (CoST) is an international initiative, designed by the Department for International Development (DFID) and the World Bank, in view of promoting transparency and accountability in publicly financed construction operations. It has been piloted over a two year period in Ethiopia, Malawi, Philippines, Tanzania, United Kingdom, Vietnam and Zambia.

In the same spirit of the EITI, in each pilot country, multi-stakeholders groups (involving notably procuring bodies, public financial management departments and agencies, construction companies and associations, civil society, as well as non-governmental providers of finance or loan guarantees) have been set up.

CoST provides a framework for the disclosure of selected project information. The kind of information disclosed include, for example, a description of the project; its purpose and location and, at the implementation stage, summary details of the original and final: project specification, project cost, contractor and completion dates. It also includes justification for any significant differences between the original and final information, as well as project evaluation and completion reports.

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91 See EC, 'Forest Law Enforcement, Governance and Trade: the European Union approach', EFI Policy Brief 2, 2008.

92 See 'Global Witness', available at http://www.globalwitness.org/

The principles underpinning CoST

CoST is a voluntary initiative applicable to any country and any government department or agency with responsibility for public sector construction projects. The principles that underpin CoST reflect a shared stakeholder commitment to transparency and accountability:

- Projects should promote sustainability. Public sector infrastructure projects should support sustainable economic growth that contributes to sustainable development and poverty reduction. Mismanagement during construction can undermine potential social and economic benefits and value for money.
- Governments should be accountable. Citizens have a right to know that their money is being used wisely. The procurement and management of public sector construction projects should be sufficiently transparent for government to be held accountable.
- Transparency can improve efficiency. Basic project information, disclosed throughout the entire project cycle, can provide an effective way to improve value for money in construction by reducing opportunities for corruption and increasing scrutiny.
- Transparency promotes investor confidence. Domestic and foreign direct investment is likely to be increased by transparency in the management of construction projects.
- Multi-stakeholder co-operation is important. Experience shows that multistakeholder working between the public and private and sectors and civil society improves transparency and gives greater confidence to citizens that all points of view are being taken into
- account. A multistakeholder group (MSG) oversees the implementation of CoST in each country. It is formed from representatives of government and procuring agencies, the construction industry, professional associations, financial organisations, investors and civil society.

Source: CoST briefing note 1 (http://www.constructiontransparency.org/TechnicalFinancialAssistance/CoSTBriefingNotes/)

1.6 Conclusion

In situating corruption within a global context, this section has charted the evolution of international efforts to recognise and prevent the phenomenon via several key conventions and instruments.

While this exercise underlines an international consensus dedicated to fighting corruption via a 'collective commitment', a brief examination of the scope and implementation of conventions and instruments employed suggests that the impact of these efforts are at best mixed.

This section has highlighted the sheer scale of the task involved with fighting corruption and has introduced some of the challenges faced to this end by the international community. Furthermore, it has emphasised the extent of the variation in the phenomenon and has indicated the need of being able to take nuanced and accurate measurements for the analysis of corruption while simultaneously taking full account of context-specific political economy of the country involved. Such care is essential in order to apply the most appropriate 'suite' of anti-corruption measures. Considering this need, therefore, Chapter Three will examine the contemporary frameworks and tools available to EU staff for measuring and analysing corruption.

Section 2: The EU approach

Corruption is a global phenomenon: it concerns at the same time the local level, the daily life of citizens in their interactions with the public and private spheres as well as the national and global level, as corruption fuels organised crime and terrorism. Combating and preventing corruption is an integral part of the EU's internal and external policies. Internally, it is a priority in respect of existing Member States (MS) and also forms a key aspect of the acquis communautaire for accession countries. Externally combating and prevention is a priority in respect of the EU's approach to international relations. Addressing corruption challenges thus requires a coherent set of policies between internal strategies and practises at the EU level and the policies and measures implemented in third countries.

1.1 EU internal anti-corruption policies

Despite existing (international) monitoring mechanisms and various legal and non-legal initiatives, research indicates that corruption in the EU remains a problem. As an example, in the Transparency International's 2010 CPI index, nine MS out of 27 (which is one third) are scoring 5 points out of 10 or less, which is an indication of widespread corruption. The economic costs incurred by corruption in the EU possibly amount to EUR 120 billion per year. This is one percent of the EU GDP, representing only a little less than the annual budget of the EU.

This confirms the data from the 2009 Eurobarometer survey. There, more than three quarters of the interviewed Europeans agreed that corruption was a major problem for their country (78%). There are proven shortcomings in the transposition of relevant international and EU anti-corruption legal instruments. For example, the 2007 implementation report on the Council Framework Decision of 2003 on combating corruption in the private sector showed that the

transposition of this instrument is not satisfactory. Another example - the UN Convention against Corruption has not yet been ratified by all EU Member States.

Minimum standards of protection against fraud, corruption and money laundering in relation to EU funds have been established. These standards are crystallised in specific legal frameworks such as the 1995 Convention on the Protection of the European Communities' Financial Interests and its protocols of 1996 and 1997, as well as the 1997 EU Convention on anti-corruption[93]. These standards aim to protect the funds of the EU budget, both at the level of income and expenses. As most of the other international conventions in the field of anti-corruption, they mainly aim to harmonise national legislation and practices in terms of criminalisation, sanctions, jurisdictional competence and judicial cooperation in criminal matters. These specific EU legal frameworks explicitly highlight the importance of anti-corruption policies and measures in acceding, candidate and other third countries.

The 2003 Communication on Corruption calls for the detection and punishment of all acts of corruption, the confiscation of illicit proceeds and reduces opportunities for corrupt practices through the establishment of transparent and accountable public administration standards. Furthermore, it promotes anti-corruption clauses within cooperation agreements and external aid programmes, against the background of guiding principles centring upon improving the fight against corruption ranking from the implementation of dedicated strategies to effective prevention measures and efficient law enforcement.

Reducing levels of bribery within the private sector is also an important aspect of the EU anti-corruption strategy. By rigorously enforcing laws against the bribery of foreign public officials, the EU believes that Member States will reinforce the internal market and strengthen their economies. Furthermore, these measures will have a positive impact on relations with external trade partners. In July 2003, the Council Framework Decision 2003/568/JHA on combating corruption in the private sector was adopted. This instrument is binding upon the Member States, while national authorities can chose how to implement it under national law and practice. It aims to ensure that both active and passive corruption in the private sector are criminal offences in all EU MS, that legal persons may also be held responsible for such offences, and that these offences incur effective, proportionate and dissuasive penalties. At its heart is the requirement that EU MS criminalise two types of conduct: promising, offering or giving a bribe to a person in the private sector; and requesting or receiving a bribe, or the promise of such, while working in the private.

In September 2005, the European Community, represented by the European Commission signed the 2003 United Nations Convention Against Corruption (UNCAC) and ratified it in November 2008. Therefore the EU as represented by the European Commission is now party to the Convention.

Priority within the EU's anti-corruption approach is also given to the establishment of effective mechanisms within EU administrations for the recovery of assets, including those stolen through corruption. Four EU legislative instruments (Council Framework Decisions), binding upon Member States are being implemented at national level. Their goal is to ensure a common EU approach to confiscation.

While not their main objective, these instruments have different spheres of responsibility, from establishing the principle of mutual recognition for confiscation orders and orders to freeze property or evidence, to focusing upon money laundering. They also aim at ensuring that EU Member States introduce effective rules on confiscation, including rules on proof with regards to the source of the assets concerned.

In November 2008 the European Commission adopted a Communication on the proceeds of organised crime which proposes ten strategic priorities on confiscation and asset recovery to strengthen the fight against organised crime. The Communication foresees an increased cooperation among EU Asset Recovery Offices and new tools related to the identification and tracing of assets. It also calls for the development of a common EU training programme for financial investigators to be implemented as a priority, as well as for the production of comparable, high quality statistics.

The Stockholm Program establishing priorities for the EU in the field of justice and home affairs for the period 2010 - 2015 provided the European Commission with a political mandate to measure efforts in the fight against corruption and to develop a comprehensive EU anti-corruption policy, as well to propose on the modalities for the Union to accede to the Council of Europe Group of States against Corruption (GRECO).

The European Parliament, in its declaration of May 2010 delivered major support for the European Commission's plan to forcefully implement the Stockholm program's priorities on fighting corruption. Speaking on behalf of the 500 million EU citizens, this strong signal has been used by the Commission to develop the 2011 anti-corruption package.

The European Commission has therefore conducted a comprehensive study on the best way to take forward this call. It provides solid evidence that effective action at EU level is needed. It also gives us a better idea of the impact of possible options and – importantly – the obstacles we are likely to face in shaping a genuine EU anti-corruption policy.

To respond to the call and political mandate of the Stockholm Program the European Commission has adopted an anti-corruption «package» in June 2011 [94], which contains:
1. a Communication on fighting corruption in the EU, updating the 2003 Communication),
2. a review of the progress made for addressing corruption in the private sector (implementation report of the Framework decision on corruption in the private sector);
3. a definition of the steps towards the EU's accession to GRECO (The Council of Europe anti-corruption monitoring mechanism); and most probably
4. a reporting mechanism on fighting corruption in the 27 EU Member States.

> **Communication on fighting corruption in the EU (June 2011): key features**
>
> The European Commission will set up a new mechanism, the EU Anti-Corruption Report, to monitor and assess Member States' efforts against corruption, and consequently encourage more political engagement. Supported by an expert group and a network of research correspondents, the Report will be managed by the European Commission and published every two years, starting in 2013. It will give a fair reflection of the achievements, vulnerabilities and commitments of all Member States. It will identify trends and weaknesses that need to be addressed, as well as stimulate peer learning and exchange of best practices. Alongside this mechanism, the EU should participate in the Council of Europe Group of States against Corruption (GRECO).
>
> The EU will also put stronger focus on corruption in all relevant EU policies – internal as well as external. The European Commission will therefore, in particular, propose modernised EU rules on confiscation of criminal assets in 2011, a strategy to improve criminal financial investigations in Member States in 2012, and adopt in 2011 an Action Plan for how to improve crime statistics. The European Commission will also work with EU agencies (such as Europol, Eurojust and CEPOL), as well as with the European Anti-Fraud Office (OLAF) to step up judicial and police cooperation and improve training of law enforcement officials. It will continue to prepare modernised EU rules on procurement and on accounting standards and statutory audit for EU companies.
>
> Also, the European Commission will adopt a strategy to combat fraud affecting the financial interests of the EU in 2011. In parallel, the European Commission will put a stronger focus on anti-corruption issues within the EU enlargement process and - together with the High Representative - in the neighbourhood policy area, as well as in cooperation and development policies. Business sector initiatives and private-public dialogue at EU level on how to prevent corruption should finally be further developed.

1.2 Addressing corruption and improving governance for the benefit of development

Governance is necessary for economic growth, investment and trade. Development and poverty reduction depend on many factors well beyond development aid: economic growth and social justice might be the most efficient ways of pulling poor people out of poverty; trade, and private investment is far exceeding Official Development Assistance in terms of finance, with only remittances representing three times as much.

Corruption is a major impediment to development. Research on this topic suggests that resources intended to address the basic development needs of millions of poor people around the world are diverted and misallocated through various forms of corrupt practices. Tentative estimates, made by a coalition of specialised institutions and bodies, suggest that corruption costs more than 5% of global GDP (2.6 trillion USD); with over 1 trillion USD paid in bribes each year[95] (which is equivalent to the total GDP of the African continent), by far exceeding Official Development Assistance (ODA) resources.

According to the World Bank, corruption can add as much as 20% to 25% to the cost of public procurement; and in Sub-Saharan Africa, implementation of efficiency oriented reforms in the road sector could raise a total of 3.8 billion USD a year, according to the African Infrastructure Country Diagnostic[96].

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94   http://ec.europa.eu/home-affairs/news/intro/docs/110606/308/1_EN_ACT_part1_v12%5B1%5D.pdf

95   International Chamber of Commerce, Transparency International, UN Global Compact,
     World Economic Forum, Clean Business is Good Business, 2009.

96   Africa's infrastructure: a time for transformation, the World Bank (2010).

As demonstrated in a recent Transparency International report released in September 2010 [97], corruption in its various forms severely curbs development, whereas increased transparency, accountability and integrity translate into better Millennium Development Goals outcomes. To take a few examples, this analysis suggests that investment on primary education is largely hampered by corruption (the increased practice of paying bribes is associated with a lower literacy rate among 15 to 24 year olds), while it highlights a significant correlation between widespread bribery and an increased maternal mortality ratio, regardless of how wealthy a country is or how much it invests in health.

Development results depend in the first place on domestic policies and domestic actors (government, private sector and other Non State Actors) and rely, sometimes heavily, on a conducive international environment (subject to international and bilateral trade agreements, raw materials prices, and even developed and emerging countries sector policies, notably agricultural and industrial support schemes). External assistance has therefore evolved from a purely technical approach to a broader support to country owned policies and reform processes, as well as addressing international governance challenges. The European Commission recognises the need to focus more on governance and political economy analysis to avoid being taken by surprise by reality and having to face unwanted, unintended consequences of its support to reform processes and in order to ensure more sustainable results.

The European Commission policy framework

The 2005 European Consensus on Development invites the European Commission and EU Member States to include corruption issues in the political dialogue and in their strategies of support to fragile States. In the 2006 Communication on «Governance in the European Consensus on Development», it is recalled that «Good governance means more than tackling corruption. Though the EU takes an extremely firm stance on this matter, viewing corruption as a major obstacle to achieving development goals, it sees it as a symptom of poor governance and of a lack of transparent, accountable management and control systems».

There is no internationally-agreed definition of governance. The European Commission definition presented in its 2003 Communication on Governance and Development and reiterated in the 2006 Communication on Governance in the European Consensus on Development[a] stresses that governance concerns the state's ability to serve its citizens. It highlights that governance refers to the rules, processes, and behaviours by which interests are articulated, resources are managed, and power is exercised in a society. The way public functions are carried out, public resources are managed and public regulatory powers are exercised are major issues to be addressed in that context.

This broad and holistic approach to governance reforms recognises that there is no particular institutional model for democratic governance. However this concept is anchored in basic universally-agreed principles (entrenched in UN Human Rights and Anti Corruption Instruments) such as transparency, accountability, participation, inclusion and anti-corruption; considered as essential factors for sustainable development. Such an approach takes into account all the dimensions of governance (political, economic, social, cultural, environmental, etc.) and the need to integrate governance into each and every sector programme, while considering governance as a dynamic process that grows into good and ultimately democratic governance, as the values of democracy and human rights are progressively entrenched into a society.

While recognising that if there is no political will inside the country, outside support is unlikely to deliver results, the European Commission considers that donors have an important role to play by developing incentive-based approaches and sustaining an adequate level of political and policy dialogue on all dimensions of democratic governance.

In countries in fragile situations (those affected by internal and external conflicts or authoritarian regimes with no space for citizen's initiatives and civil society voices) a lack of political legitimacy is often compounded by very limited governance capacities. Addressing governance in these countries demands a step-by-step approach aimed at gradually raising governance standards. Many countries must first achieve basic stability and a minimum of institutional development before they can start implementing long-term development policies.

(a) Communication on Governance and Development, COM (2003) 615, available on http://eur-lex.europa.eu/ LexUriServ/LexUriServ.do?uri=COM:2003:0615:FIN:EN:PDF and Communication on Governance in the European consensus on development: towards an harmonised approach within the European Union, COM (2006) 421, available on http://eur-lex.europa.eu/LexUriServ/site/en/com/2006/com2006_0421en01.pdf

Governance, as a development policy objective has been considerably strengthened in recent years and is a central feature of the European Commission external assistance. The European Commission follows two main operational strategies for addressing corruption and improving governance in third countries by (i) supporting specific interventions in key governance areas (justice, security, democratisation, non state actors, public sector reform and decentralisation, etc.), and (ii) mainstreaming governance in other areas of cooperation (health, water, education, transport, infrastructure, etc.) so as to ensure that all projects and programmes - at every stage of their development – analyse and address governance challenges.

97 *The Anti-Corruption Catalyst: Realising the MDGs by 2015, Transparency International, 2010. Available on: http://www.transparency.org/news_room/in_focus/2010/realising_the_mdgs_by_2015*

Between 2005 and 2009, the European Commission committed around € 9 billion in the field of governance. Out of this amount, € 5.6 billion were managed by EuropeAid[98]. This amount covers activities in the areas of legal and judicial development, government administration, strengthening civil society, human rights, elections, women's equality, security system management and reform, civilian peace-building, conflict prevention and resolution, post-conflict peace-building (in cooperation with relevant United Nation agencies), reintegration and Small Arms and Light Weapons control, landmine clearance and child soldiers. This support notably contributed to create an enabling environment for improving governance, addressing corruption challenges and enforcing anti-corruption legislation.

The European Commission also protects its financial assistance from corruption and fraud according to international standards in this field. It deals with the fiduciary risk linked to its development assistance by implementing sound procedures and comprehensive audit framework and systems. Financing agreements with beneficiary states, as well as procurement system, include standard clauses clarifying that the Commission may cancel financing and making the beneficiary State responsible for taking concrete actions in case of corruption.

The European Commission audit strategy is based on two pillars. The first one consists of mandatory audits and expenditure verifications which are provided for in the Financial Regulations and the programme legal basis and are reflected in legal agreements (e.g. Financing Agreements with third countries) and standard external aid contracts. The second pillar constitutes an additional layer of controls and concerns risk-based audits which are a response to the specific risks perceived by the Authorising Officer.

To implement this strategic approach, the European Commission has developed and uses the following main methodological tools: (i) governance profiles and governance action plans, (ii) programming and policy dialogue at national and regional level, (iii) analysing and addressing governance in sector operations.

As for other areas of intervention, support to governance reforms follow the principles of the Paris Declaration on Aid effectiveness and the Accra Agenda for Action [99], which contains a road map with clear mutual commitments on alignment to beneficiary countries' policies, using more and more country systems for channelling the funds, on effective coordination between country and donors and harmonisation of donors' requirements and practices. Furthermore, the Paris Declaration emphasizes the importance of mutual accountability; implying obligations on both sides of the partnership (governance of aid).

At the country level, while taking into account the conditions in specific countries, the European Commission support to the fight against corruption through external aid by:
- Supporting the reform of public administration and to the management of public finances (in particular in the case of budgetary support to the partner country);
- Supporting the improvement of the business and investment climate and customs reform;
- Supporting the fight against economic/financial crime (capacity-building for law enforcement and judicial authorities, as well as specialised bodies such as Anticorruption Commissions), as well as support to Justice and Security reforms (including police reform);
- Supporting the civil society and media as watchdogs, as well as Supreme Audit Institutions and Parliaments in exercising their oversight and control functions.

As an example, is the **support to the Law Enforcement Against Economic and Financial Crime project in Nigeria** implemented by UNODC. The project aimed at enhancing good governance and financial accountability, fight fraud and economic and financial crime by enhancing the technical and operational capacities of the Economic and Financial Crime Commission (EFCC), the Nigerian Financial Intelligence Unit (NFIU) and the Judiciary. The project focused on four result areas:
Provision of state of art IT Equipment for EFCC and NFIU;
Training of the staff;
Awareness campaigns aimed at specific groups (banking sector, public, media);
Support and capacity building of the Judiciary in 10 states in judicial integrity and in the trial of economic and financial crimes.

The project, which was funded under the 9th EDF has contributed significantly to the successes recorded by the Economic and Financial Crimes Commission in recent years. Stolen assets worth than more US$10 billion have been recovered and there has been a large number of arrests and prosecutions. Nigeria is no longer considered as a «non cooperative nation» by the Financial Action Task Force of the OECD and is now part of the Egmont group.

Under the 10th EDF, European Commission support is being extended to all other anti-corruption agencies. The objective is to contribute to Nigeria's efforts in enhancing transparency, accountability and combating corruption. Agencies such the Economic and Financial Crimes Commission (EFCC), Independent Corrupt Practices (and Other Related Offences) Commission (ICPC) as well as the Office of the Auditor General will benefit from these interventions. NGOs working with anti-corruption advocacy will also be targeted. Stakeholders involved directly or indirectly in procurement issues will also benefit from the project. This project is built on the successful experience of the previous support under the 9th EDF to the government in the same area.

Another example of one of the areas of intervention consists in the supports provided in several countries to **Transparency International Advocacy and Legal Advise Centres (ALACs)**. The purpose of the ALACs is to empower citizens to make and pursue corruption related complaints by providing legal advice and assistance to victims or witnesses of corruption. Using information gained from the individual cases and reflecting the real experiences of people enhances the legitimacy of advocacy campaigns: many changes have been initiated by ALACs, including for example the introduction of whistleblower laws, new administrative procedures for inspections and licenses, landmark decisions concerning the application of access to information laws.

This bottom up approach, aiming at supporting citizens in the daily challenges posed by corruption and leading to systemic changes is an effective way of addressing corruption. The Commission notably supports Transparency International National Chapters (NCs) in Cameroon, Madagascar, Mauritius, Niger and Senegal for creating an ALAC in each of these countries in view of contributing to a sustainable socio-economic development in these countries by empowering citizens, civil society and institutions to fight against corruption.

International initiatives have also an important potential to contribute to better governance and to address corruption challenges in developing countries. At the global level, the European Commission has therefore both established and is supporting global frameworks aiming at setting transparent systems for extracting and trading natural resources and raw materials, areas characterised by high risks for governance failure, corruption and mismanagement.

Many of the partner developing countries of the EU are suffering the devastation of their forest through illegal logging. Their forests are destroyed, affecting the millions of people whose livelihood depends on the timber and non-timber products of the forests. Conflicts for the control of the illegal exploitation of the forests have not only led to massive human rights violation but also fuelled corruption in the affected countries. As a result, considerable amounts of public revenues are grabbed by criminal networks and rebel groups and are, therefore, diverted from the efforts aiming at reducing poverty.

As explained above in more detail, in order to address this issue, the European Commission has adopted the Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan in 2003[100].
Moreover, with the adoption of the 2010 Due diligence initiative, timber importers who place timber and wood products onto the European market are prohibited from selling illegally harvested timber and timber products.

The European Commission has endorsed and will continue to support the above-mentioned Extractive Industries Transparency Initiative (EITI), which is a global standard promoting revenue transparency and domestic accountability in countries with rich oil, gas and mining sectors.

The European Commission, representing the EU as a whole, participates to the Kimberley Process Certification Scheme and has chaired the Kimberley Process (KP) in 2007. The Commission is part of the KP Monitoring Working Group that supervises KPCS implementation globally.

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100 See point 1.5.3 of the Concept Paper

The European Commission encourages and supports the effective implementation of the United Nations Convention Against Corruption (UNCAC) and other regional anti-corruption conventions. The UN convention may provide a promising platform for multi-actors dialogue on corruption at country level on concrete set of measures for preventing and criminalizing corruption, as well as raising awareness among citizens, notably on the basis of its review mechanism. The European Commission promotes a multi-stakeholders dialogue around core issues related to the implementation of UNCAC, starting from the country reviews which should include strong Civil Society involvement, country visits and publication of accurate review findings. The review mechanism will facilitate effective implementation of the Convention, will identify successes and challenges in this implementation, will promote and strengthen international cooperation and will identify technical assistance needs of developing countries.

How do we cooperate with other actors?

For performing an effective anti-corruption work, the European Commission is convinced that it cannot work in isolation, but has to create strong partnerships with other donors and stakeholders. Several areas of cooperation have been initiated.

1. Analysing corruption and monitoring anti-corruption reforms:

The GATEway project: Analysing corruption is key for identifying clear entry points for the external assistance. In that framework, the European Commission is part of a joint initiative with Transparency International, the UNDP and other stakeholders (such as the London School of Economics) aiming at making a more efficient use of existing corruption assessment and integrity measurement tools (see Chapter 3 for further information).

2. Analysing the effectiveness of Anti-Corruption Agencies (ACAs):

The European Commission has supported several anti-corruption commission/agencies (Nigeria, Uganda, Tanzania, Burundi, Dominican Republic, Indonesia) sometimes with relatively mixed results. In view of developing clear guidance for improving the design and the implementation of forthcoming operations, the European Commission has initiated a cooperation with the Anti-Corruption Thematic Group (ACTG) at the World Bank, the United Nation Office of Drugs and Crime (UNODC) and the US State Department, by supporting a new initiative aimed at reducing and preventing corruption through institutional strengthening of national anti-corruption authorities (ACAs) and building their capacity. The objective of this activity is to better understand the institutional structure of individual ACAs in an attempt to support their efforts more effectively in the future. This exercise will also provide important information on the form and the structure of ACAs in order to help and guide other ACAs facing similar challenges, improve their effectiveness, and guide other donors and practitioners for supporting their work.

Following the organization of a global seminar in March 2010 in Washington gathering an important number of anticorruption authorities representatives, diagnostic questionnaires have been designed, and disseminated to ACAs, they have been analyzed and several case studies have been undertaken (Ethiopia).

3. OECD/DAC - Anti-Corruption task Team:

The European Commission is also participating to the task team on anti-corruption set up in the context of the OECD/DAC, where important discussions are taking place on: (i) joint orientations for providing technical assistance for UNCAC implementation, (ii) integrating anti-money laundering in development assistance and the role of donors in monitoring the Accra Agenda for Action commitments on asset recovery, and (iii) identifying the ways to address international drivers of corruption at country level.

4. International Organisation of Supreme Audit Institutions INTOSAI*(a)* – donor community cooperation:

On 20 October 2009 in Brussels the European Commission, together with Austria, Belgium, Canada, Ireland, the Netherlands, Norway, Sweden, Switzerland, the UK, the USA, the African Development Bank, the Inter-American Development Bank, the IMF, the WB, and INTOSAI officially signed the Memorandum of Understanding launching a new global strategic initiative on capacity development of Supreme Audit Institutions (SAIs) in aid recipient countries.

The Memorandum of Understanding is a milestone agreement marking the willingness of all parties to work together in a coordinated manner to support the development of capacities of SAIs. It is consistent with the international principles on aid effectiveness expressed by the Paris Declaration and the Accra Agenda for Action.

The new global strategic initiative will allow all the parties to work in a more coordinated way, to avoid overlaps in both action and funding, and to make better use of financial and human resources.

(a) INTOSAI is the International Organisation of Supreme Audit Institutions, an autonomous non-governmental organisation of 189 members. Founded in 1953, it provides an institutionalised framework to promote exchange of knowledge and enhance professional capacities of member SAIs in their respective countries. INTOSAI enjoys a special consultative status with the Economic and Social Council (ECOSOC) of the United Nations.

1.3   Concluding remarks:

The European Commission is well aware of the need to go beyond controls and to adopt a larger framework enabling the promotion of good governance, to fight corruption in order to achieve sustainable results in terms of poverty reduction. Corruption should not be addressed in isolation but integrated in strategies to support democratic governance reform processes. Policy documents and concrete tools and financial instruments have been developed in the past five years to provide incentives and assist partner countries in advancing on governance reforms.

Improved governance and fight against corruption have to be implemented through the consolidation of State capacities to exercise its functions and to ensure effective service delivery to all its citizens. But it also implies the strengthening of other governance actors, both from the public sphere and from civil society to ensure better accountability and transparency of the State towards its citizens.

Progress registered in governance reforms over the last years have shown that to be effective governance improvements are achievable through a combination of initiatives and actions at local, national and international levels.

At country level, positive results of external assistance are often grounded in initiatives driven by local change agents who are able, with some assistance, to sustain a reform agenda and instigate institutional changes for sustainable improvements.

A the same time, national governance reforms can be greatly stimulated and facilitated by targeted international initiatives where the responsibility for improving governance lays on both the «supplier» and the «consumer» of critical commodities and products. These international initiatives must be therefore further strengthened.

Existing regional and international legal instruments on anti corruption also provide a very comprehensive framework for effective anti corruption strategies: the challenge lies in their transposition in the national systems. The European Commission needs to further increase its efforts to assist willing countries in their implementation.

# CHAPTER THREE: ASSESSING CORRUPTION AND MONITORING ANTI-CORRUPTION

Assessing corruption or monitoring anti-corruption efforts can help mitigate risks inherent in development programmes and projects. These are the risk of misuse of funds (fiduciary risk); the risk that corruption will undermine donor country citizen support to aid (reputational risk); and the risk that corruption will undermine the development objectives of programmes or projects (development risk). Assessing corruption and monitoring anti-corruption reforms is therefore a key step and a building block for both orienting the European Union political dialogue with partner countries, European Commission's policy dialogue and designing relevant measures to be integrated in EU development cooperation both related to the reform of core governance systems and to sector level reforms.

Over time the application of corruption assessments has evolved. In the 1990s there was a proliferation of cross-country indices, including assessments of corruption such as Transparency International's (TI's) Corruption Perception Index (CPI) and the World Bank's Governance Indicators (WBGI). The CPI and WGBI have been important for putting corruption on the agenda of global policy-makers[101]. By the early 2000s, the fight against corruption was established as a priority for the public and private sectors, but this led to a clear need for assessment tools to show changes over time as well as to compare countries with each other. A 'second-generation' of tools was subsequently developed. This includes tools that measure the actual experiences of people in addition to their perceptions (e.g. TI's Global Corruption Barometer[102]), and other tools that assess anti-corruption systems, standards and practices (e.g. the World Bank Public Expenditure and Financial Accountability (PEFA) Framework[103]).

These second generation tools expanded and developed over time to what could be called 'third generation' tools. These third generation tools go beyond their predecessors to provide a more nuanced assessment of corruption issues in specific contexts. For example, the World Bank's Actionable Governance Indicators[104] assess governance, but are also specifically designed to give greater clarity regarding the steps governments can take to improve governance and, as a consequence, improve their ratings.

As a result of these developments there has been a proliferation of governance tools and indicators (see Figure 2). There are many tools for governance assessment but this chapter focuses on corruption tools.

Figure 2: The mushrooming of indicators[105]
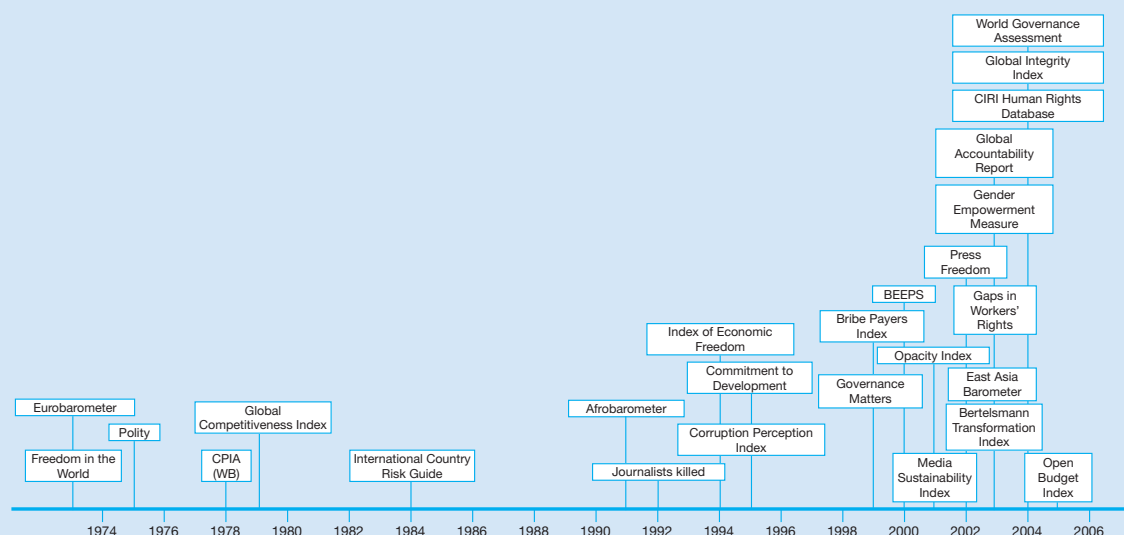
Source: UNDP

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101 Heinrich, F. and Hodess, R., 2011, 'Measuring Corruption', in Graycar, A. and Smith, R. (eds),
      'Handbook of Global Research in Corruption', Cheltenham: Edward Elgar.

102 http://www.transparency.org/policy_research/surveys_indices/gcb

103 http://www.pefa.org

104 http://go.worldbank.org/BN5GB74IV0

105 http://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup4/2010-December-13-15/
      Presentations/Anga_Timilsina_-_UNDP_AC_measurement_Dec14_2010.pdf

To assist governance and development practitioners, as well as sector experts, in their task of public policy reform and evidence-based advocacy the European Commission became part of a joint initiative with Transparency International, the UNDP, the World Bank and other stakeholders (notably research centres in Europe and in developing countries). This initiative, known as the GATEway project, aims to make more efficient use of existing corruption assessment and integrity measurement tools that target both global indexes and sector related tools. The GATEway[106] project involves mapping, codifying and clustering existing tools, and providing tool users with guidance on the strengths and weaknesses of the different assessment approaches. This information will be made available through an online web platform to be launched in late 2011.

The third chapter of this concept paper provides initial orientations and guidance on the key issues and challenges to have in mind when seeking effective assessments of corruption or anti-corruption efforts. It also proposes a set of practical steps for organising this kind of analysis, while the GATEway project will provide targeted orientations on sector (such as education, health, water and sanitation, justice) and process (such as political parties financing, public procurement, budget monitoring) related analysis.

Section 1: Introduction

Key points:

- Each corruption assessment has unique factors.
- There are a variety of corruption tools, each suited for a different context.
- Choose the purpose, focus and the most-suited data sources to identify the appropriate tool for the specific context.

Measuring corruption is a challenging process. As Chapter One shows, corruption is highly variable and dependent on context. It can only be measured indirectly and requires nuanced and tailored measurements. Finding an appropriate measure has been difficult in the past, but over the last decade there has been a substantial growth of governance indicators, some of which are focused explicitly on corruption.

This chapter seeks to guide the EU staff through the range of tools and instruments available for assessing levels of corruption and monitoring anti-corruption. It highlights the key questions users must ask when designing an assessment:
- What is the particular purpose of the assessment (e.g. awareness raising, coalition-building, programme failure)?
- What is the level or focal point of the analysis (e.g. at the sector level, focusing on an organisation, at the national level)?
- What data is most suited (e.g. desk-studies, interviews, surveys)?

Thinking through these questions allows users to find an assessment tool that meets their objectives and is suitable for their context. There is currently a wide range of users of corruption and broader governance indicators:
- **Development agencies and practitioners:** Used in country strategy documents, supporting analysis (e.g. Governance Profiles), to determine aid allocation and to a lesser extent donor accountability, managing for results and demonstrating value for money to taxpayers. They have been used as a tool for policy dialogue with governments and are increasingly included in budget support performance assessment frameworks, including their use as disbursement triggers.
- **Governments and civil society:** Used in monitoring frameworks for national poverty reduction strategies, reform programmes, and by some countries to demonstrate reform with a view to improving their international rankings.
- **Academics and researchers:** Used to explore the determinants and development consequences of good governance.
- **International advocacy and human rights organisations:** Used to spur public interest and to apply pressure on governments.
- **Media:** Used as easily communicable ratings.
- **International investors:** Used to assess political risks and the costs of doing business, including the impacts of regulatory measures and corruption.

Different users have different objectives based on their organisations, task mandates, and objectives. With this growth of users there has also been a growth in the number of purposes for corruption assessments. Over time the application of corruption assessments has evolved from using corruption assessments primarily to help promote the fight against corruption, to using them to compare levels of corruption over time and space, to using them to provide a comprehensive and nuanced assessment of corruption issues in a specific context[107].

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106 http://www.transparency.org/tools/gateway
107 Heinrich, F. and Hodess, R., 2011, 'Measuring Corruption', in Graycar, A. and Smith, R. (eds),
    'Handbook of Global Research in Corruption', Cheltenham: Edward Elgar.

This can notably be demonstrated by the three tools: the Transparency International Corruption Perceptions Index (CPI), the Transparency International Global Corruption Barometer (GCB) and the World Bank Actionable Governance Indicators (AGI).

The Corruption Perceptions Index (CPI) first released in 1995, is arguably the best known corruption tool. It ranks countries by their perceived levels of corruption, as determined by (predominately foreign) expert assessments and opinion surveys. It has been used to raise awareness of corruption and highlight it as a factor detrimental to development. The Global Corruption Barometer (GCB) is a public opinion survey that assesses how corruption is viewed at a national level and includes people's experience of corruption in the past year. This inclusion would allow it to be more responsive when used to assess changes in country corruption over time. The Actionable Governance Indicators (AGI) developed from 2007 aim to provide information on the discrete elements of governance reforms. They provide greater clarity regarding the steps governments can take to improve their scores on an indicator, i.e. if the government successfully undertakes reforms in certain areas, relevant indicator(s) will respond in a favourable direction. Policy-makers increasingly turn to corruption assessments to identify where action can be taken to combat corruption. The Actionable Governance Indicators (AGI) is an example of a tool that does just this. As opposed to the wider corruption or governance indicators 'actionable' indicators aims to drill down to specific governance elements to identify opportunities for reform. For example, human development AGIs related to education include absenteeism, time on task, under the table payments, and completion rates[108].

It would be better to use indicators which not only highlight opportunities but guide policy-makers towards the most worthwhile reforms - what can be termed as 'action-worthy' indicators. An example of an actionable but not necessarily action-worthy indicator could be whether or not a country has an independent anti-corruption agency (ACA). If it did not, an ACA could be created, but this might not be the best use of resources if the institutional climate is likely to hinder the independence of any ACA. Although 'actionable', this indicator on its own is not guaranteed to help reduce corruption[109]. Whether an indicator is action-worthy would depend very much on the context, something that is more likely to come through if used in conjunction with political economy analysis (PEA).

When designing corruption measures it is therefore important that the tools and indicators used are fit for the purpose for which they are intended.

Section 2: Purpose

Key points:
- Different corruption assessments serve different objectives or purposes.
- Certain tools respond to specific purposes better than other.
- Tools, especially some of the most popular tools, are suited to raising awareness of corruption but not to guiding policy-makers on suitable reform.

There are now a large number of tools and indicators available for corruption assessment. Though many of them have similar names, they often have distinctly different purposes. Clearly identifying the purpose or objective of the assessment is a crucial first step to preparing an assessment. Common purposes include:

- **Diagnosis:** To determine the drivers of corruption and the blockages to reform.
- **Early-warning:** To identify areas and individuals vulnerable to corruption.
- **Awareness-raising:** To improve common understanding of the effect of corruption on development and promote fighting corruption as a priority of development programmes (see Box 14 below).
- **Coalition-building:** To build consensus and to strengthen and sustain political will for governance reform.
- **Monitoring:** To evaluate progress of anti-corruption programmes and projects.
- **Research guidance:** To identify areas to focus on for research.
- **Political and policy dialogue:** To promote policy dialogue in relation to corruption and wider governance issues.
- **Fiduciary risk:** To assess the risk that funds are not used for the intended purposes; do not achieve value for money; and/or are not properly accounted for.
- **Programme failure:** To identify whether corruption has been a contributory factor to programme failure.

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108 http://siteresources.worldbank.org/EXTPUBLICSECTORANDGOVERNANCE/Resources/286304-1235411288968/
fULLvERSION.pdf?resourceurlname=fULLvERSION.pdf It should be noted that the AGIs are not the only source of actionable indicators, and there is a great deal of information that may already be produced locally that could guide policy.

109 http://siteresources.worldbank.org/INTWBIGOVANTCOR/
Resources/1740479-1149112210081/2604389-1167941884942/On_Measuring_Governance.pdf .

Box 14: Transparency International's Corruption Perceptions Index (CPI)

The Transparency International Corruption Perceptions Index (CPI) was launched in 1995 and aims every year to rank almost 200 countries by their perceived levels of corruption. It is a 'survey of surveys', bringing together expert assessments and opinion surveys from around the world into a composite index. In 2010, Denmark, New Zealand and Singapore topped the chart, with a score of 9.3 each, while Somalia was ranked the most corrupt country in the world, according to perceptions, at 1.1.

As Transparency International point out, the CPI 'has been widely credited with putting the issue of corruption on the international policy agenda'[1]. It is an extremely helpful tool for awareness raising, at both national and international levels, and shifts either up or down the Index offer real opportunities for opening policy dialogue with partner countries. Put simply, governments do not like to see their countries rank badly on the CPI, as they know it will adversely affect their image globally. Businesses, donors, neighbours and citizens all pay attention to the CPI.

What the CPI is not, however, is a tool that measures corruption levels. It only measures perceptions, mainly of international business people, and so may be subject to significant bias. Although it can tell us an interesting story about how countries compare in term of perceived corruption levels, it tells us nothing about levels of corruption at the sub-national or sector level. It is not 'hard' empirical data, and some critics argue against evidential data on which the index is based is often scant for some countries, making them problematic to rank[2]. Even if one were to see the TI-CPI as 'hard data', it does not rigorously analyse whether the difference in ranking between countries is statistically significant.

In short, the CPI is an advocacy tool par excellence, but should not be relied upon as a tool for measuring corruption, certainly not in isolation.
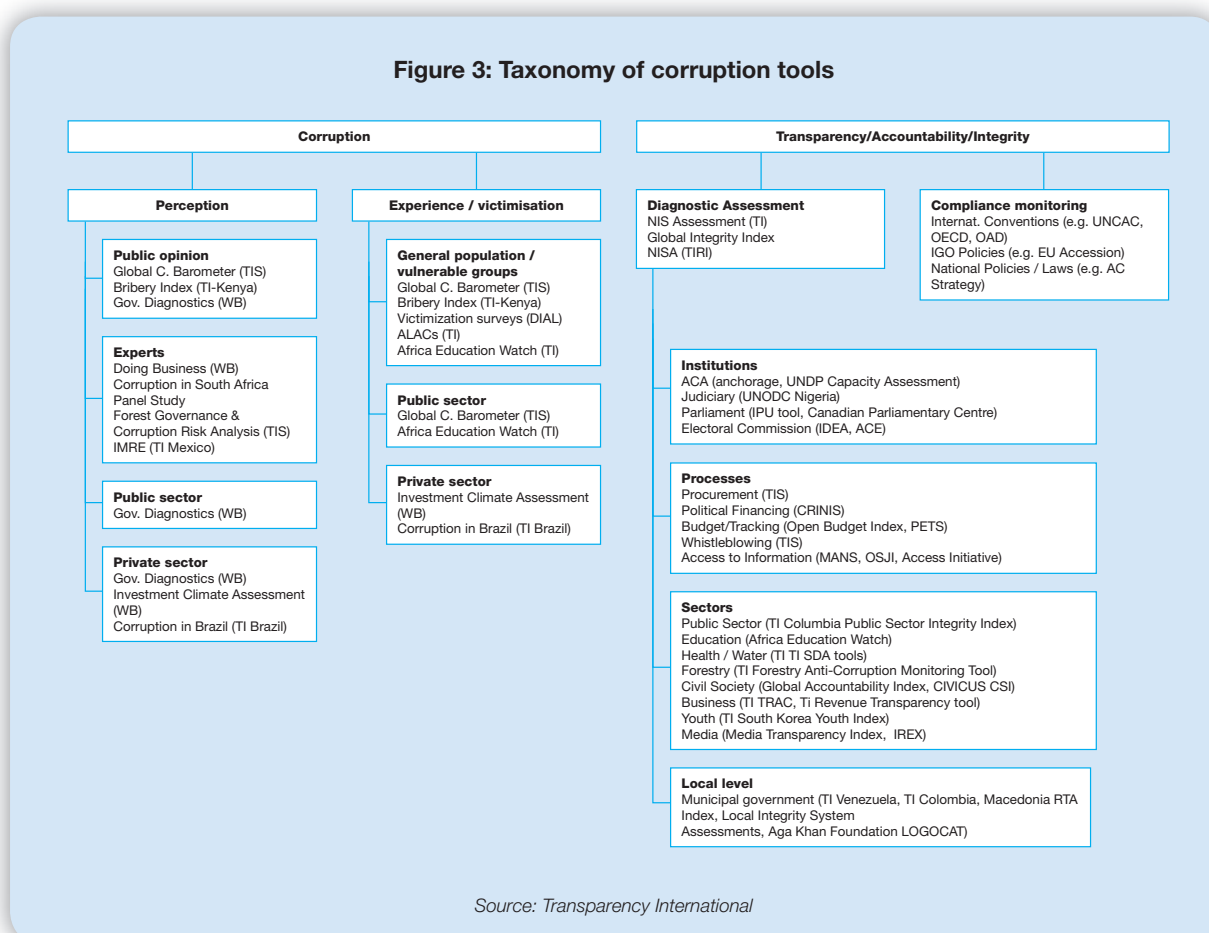
1 *Transparency International, 2011, Corruption Perceptions Index, See http://transparency.org/policy_research/surveys_indices/cpi*

2 *See Andersson, S. and Heywood, P. (2009) The politics of perception: use and abuse of Transparency International's approach to measuring corruption. I, 57(4): 746-67, and Sampford, C., Shacklock, A., Connors, C. and Galtung, F. (Eds) (2006) Measuring Corruption. Aldershot: Ashgate*

For EU and other donor staff, likely purposes for this sort of assessment include political reporting, risk analysis linked to budget support, specific corruption assessment linked to sector reform (including both policy dialogue and design of operations) and monitoring trends in democratic and economic governance reforms and so on.

When defining the purpose another aspect to consider is the area of focus (illustrated by Figure 3). In particular, is the area 'corruption' or 'anti-corruption'? Measuring corruption is based on perceptions and experiences of the general population, public sector, private sector, and/or experts. Anti-corruption or integrity assessment is based on compliance monitoring of local, national or international policies and conventions, as well as diagnostic assessments of institutions, processes, sectors and/or at the local level. There may also be a need to focus on a particular sector, such as the public sector, or a specific institution.

Figure 3: Taxonomy of corruption tools

Source: Transparency International

Section 3: Level

Key points:

- Tools can address different levels: supranational, multi-country, national, sub-national, sectoral, organisational, and multi-level.
- Corruption assessments at one level may not be generalisable.
- Assessments will vary significantly depending on which levels are included in the assessment.

There are different levels at which the assessment could focus for which different tools would be appropriate. There is significant overlap between levels (e.g. Global Integrity can be multi-country, supranational and multi-level). Levels can be defined as following:

- **Supranational:** Extending beyond or transcending national boundaries (e.g. Corruption Monitoring System (CMS) of the Center for the Study of Democracy[110])
- **Multi-country:** Covering a number of different countries (e.g. Global Integrity Index[111]). There are a number of methodologies for multi-country assessments.
- **National:** Focusing on aspects within an individual country (e.g. National Integrity System[112]). In many cases tools have been tailored for a specific country context. (See section five :National Level Tools)
- **Sub-national:** Focusing on local governance dynamics (e.g. Good Governance for Local Development: GOFOR-GOLD Index[113])
- **Sectoral:** Focusing on a specific sector such as service delivery sectors (e.g. National Health accounts[114]). In some cases it has been necessary to create new sectoral tool specific tot that context. (See section five: Sector and Problem Level Tools)
- **Organisational:** Focusing on a particular department, ministry or institution.

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110 http://www.csd.bg/artShow.php?id=15531

111 http://report.globalintegrity.org/globalIndex.cfm

112 http://www.transparency.org/policy_research/nis

113 http://www.gaportal.org/tools/good-governance-local-development-%E2%80%93-goforgold-index

114 http://www.who.int/nha/en/

- **Multi-level:** Focusing on several levels (e.g. Bertelsmann Transformation Index[115]). This can be, for example, a focus at the national, sub-national and supra-national level.

Levels of corruption and perceptions of corruption can vary significantly between levels. A corruption assessment with a focus or emphasis on a particular level may not be generalisable. This is especially the case in relation to the public and private sector where inclusion or exclusion of the private sector perceptions in an assessment can significantly affect the results (see Figure 4 in 2007 below).

## Section 4: Data collection method

Key points:

- Type and source of data collected for assessment profoundly impacts the results.
- It is important to understand what makes up an indicator.
- Perception data and tools based on perception data must be interpreted in context.

Good data is essential for a good assessment. However, corruption as an illicit activity is often intentionally obscured making it hard to obtain good data. Furthermore in developing countries there may not be the capacity to gather relevant data. Corruption assessments are designed to make assessments based on the limited data but the choice of data source ultimately affects the outcome.

4.1   How is the information gathered?

Assessments on anti-corruption are determined by what data is collected, how it is collected and by whom. The choice and method of data collection has profound impacts on the results. Figure 4 demonstrates how three different types of assessment of China, Thailand and India produced markedly different rankings, attributable to differences in the data used. The World Bank Control of Corruption assesses corruption in the public and private sector as perceived by experts and opinion polls; the Transparency International Corruptions Perception Index (CPI) assesses corruption in the public sector as perceived by experts (notably foreign experts); the Global Integrity Index assesses the existence, effectiveness and citizen access to anti-corruption mechanisms, assessed by national experts.


Figure 4: Comparison between three types of assessments in 2007

Corruption indices for China: Variations in rankings
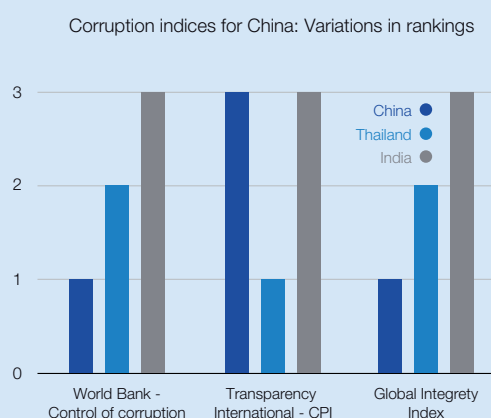
Source: UNDP

The World Bank Control of Corruption and the Transparency International Corruptions Perception Index (CPI) also show different trends of corruption over time with China showing improvement between 2004 and 2006 with Control of Corruption and worsening with the CPI (see Figure 5).

Figure 5: Comparison between two different assessments over time

World Bank - Control of Corruption (China) 2004-2006

Transparency International - CPI (China) 2004-2006
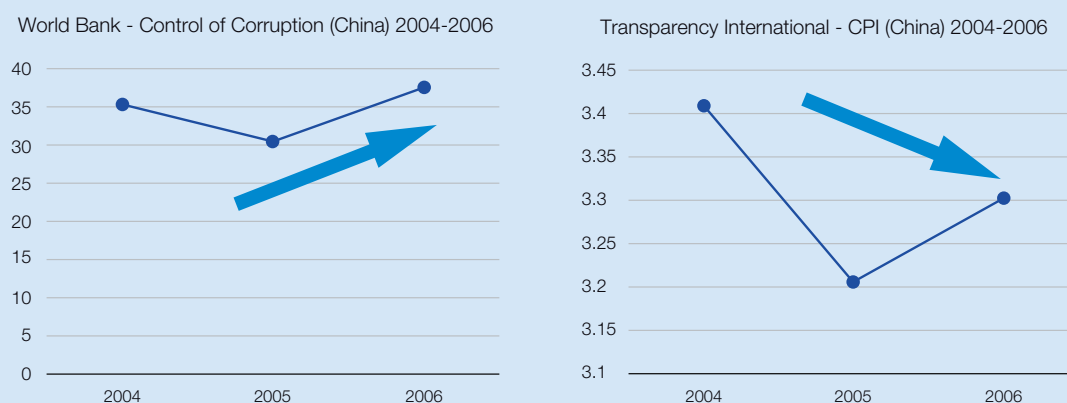
Source: UNDP

Other factors affect the quality of data collected. Integrity and independence are important criteria for those collecting data – those reporting on cases of corruption need to have confidence and trust in them. Those gathering data or the organisations they represent may have values and beliefs that bias the way in which data is gathered. There may be language, cultural or geographical barriers or resource limitations. Those designated experts will have differing opinions depending on whether they are from the country in question or foreign experts. It is important that those collecting data ensure that it is secure and that there is an appropriate degree of confidentiality.

Various methods and combinations of methods can be employed to gather information. The main methods are:
- **Desk-study:** This method can be used to identify de jure provisions in constitutions or legislation as well as reports on observed corrupt practices or anti-corruption measures. This method is ultimately dependent on the quality of the information available.
- **Interviews:** Interviewers should be well-trained, have a good understanding of the data and be able to elicit insightful responses from interviewees.
- **Focus groups**: This is a participatory approach, often involving open questions and free thinking, where a high level of trust among participants is desirable.
- **Surveys, either postal survey or Internet:** Postal surveys can be effective on areas with a literate target population and a working postal system. Internet surveys can be used where there is a literate target population who have access and inclination to respond by internet.
- **Expert coding of narrative reports:** Academics or other experts can be employed to go through narrative reports, identify incidents of corruption (or anti-corruption efforts) and code them accordingly.

4.2   What types of data can we get?

Anti-corruption tools and indicators employ one of the following types of data:
- **Objective:** These are indisputable facts such as written provisions, policy measures or reports from established bodies such as the Auditor General or Public Accounts Committee.
- **Perception:** These are based on the views and opinions of people either resident in the area or outside of it. They are usually collected through surveys, but can also be collected through interviews and focus group discussions.
- **Composite indicators:** This is a mixture of objective and/or perception measures to produce a single measure.

The different types of data have varying advantages and disadvantages. In relation to perception data, those outside of the area may have strongly differing views to those in within it. This can be due to differing norms and standards of conduct. Indicators, and especially anti-corruption indicators, have underlying normative assumptions that are important to take into account.

Perception data may be most valuable where objective measures are weak or non-existent. However perception data is prone to bias and will not necessarily be a true reflection of reality. There are time lags, with perceptions often slow to change following improvements in (or worsening of) governance. Some environments stifle dissent or contain a culture reluctant to air criticisms or negative opinions. Alternatively an increased awareness of corruption following a recent or well-publicised series of incidents of corruption may mean more acts are classified as corruption, building a strong but false sense of corruption. Better enforcement of anti-corruption measures means that more cases of corruption are

disclosed, and can therefore lead to perceptions that corruption has increased. A high-profile anti-corruption drive may increase the perception of corruption just when corruption is actually starting to be effectively combated. Other social factors not related to corruption, per see, can also affect perceptions. For example, when measuring victimisation due to corruption, respondents to surveys are more likely to perceive corruption when they tend to feel unsafe and have been victims of other offences. Perception data must thus be interpreted in respect to the context.

Some indicators are effectively proxy measures for aspects of corruption difficult or impossible to measure. Proxy measures use much more indirect 'signals' of corruption or measure anti-corruption processes or institutions. The link between proxy measures and what they purport to measure can be contestable. For example, the number of corruption cases brought to trial over a given period is a common proxy indicator. An increase in this number may indicate progress in combating corruption or it could instead indicate the opposite – a greater incidence of corruption. Proxies may not behave in a similar fashion to the target issue and respond differently to anti-corruption programming.

A growing area of research that may help us in better understanding why some anti-corruption efforts fail while others succeed focuses on attitudes towards corruption. Attitudes are different from perceptions; attitudes are internal to a respondent (e.g., 'this is how I feel about corruption'), whereas perceptions are external (e.g., 'this is how I feel about everyone else's corruption'). As such, attitudes have the potential to tell us a great deal about where societal pressure for anti-corruption is likely to come from, or why there is not the societal pressure we might expect. [116]

Methods used in analysis on attitudes towards corruption tend to be qualitative, involving one-on-one interviews and focus group discussions. These can be done at any level – national, local, sectoral and so on – and can be designed in a way that allows for cross-national comparison.

Box 15: Attitudes towards corruption at the country level: some examples

Two examples are provided here to demonstrate how this research can be used to inform better programme or project design. The first is by Giorgio Blundo and Jean-Pierre Olivier de Sardan, who undertook an ethnographic study in Francophone West Africa looking at the interaction between service providers and users. Although the participants were not asked directly about corruption, the issue came up very strongly through the analysis and relates to the degrees of legitimacy for particular corrupt acts. These vary from 'tributes or tolls', such as extortion or police road blocks, for example, which are widely seen as illegitimate, to 'commission' for illicit services, where participants were highly ambivalent, to 'string-pulling', favours and nepotism, which participants felt were legitimate acts.

One policy implication of this is that programmes and projects that seek to eliminate corrupt activities that a majority of citizens feel are legitimate or are ambivalent towards are very likely to be hard to push through. Using citizen intolerance as an entry point could prove to be much more effective; in other words, focusing resources on combating an activity that everyone condemns – police roadblocks, for example – is likely to find more support and thus be more successful. It is possible that winning an easier success may also build greater support for combating other types of corrupt activities, moving up to behaviours that may be largely tolerated and then finally move on to those that are seen by society as being legitimate (e.g., non-meritocratic recruitment in the public sector).

The second is by Heather Marquette, Vinod Pavarala and Antonia Simbine, who used interviews and focus group discussions to assess the relationship between religion and attitudes towards corruption in India and Nigeria. Both countries rank very high in the Corruption Perceptions Index (CPI) and also rank very high in measures of religiosity, and it has been suggested that religion and religious organisations may have a role to play in anti-corruption work in both countries. However, evidence from their study suggests that although participants without exception strongly condemned the corruption they saw around them, there was a strong tendency to explain away their own behaviour. In both countries, participants saw religious organisations as being part of the problem, rather than the solution, due to high levels of corruption within organisations. Indeed, one participant said that, 'We make God a stakeholder in corruption'. However, most participants also believed that religious organisations should play a role.

One policy implication from this study is that religious organisations can only play this role if they are trusted; however, trust is low in both countries, including trust in religious leaders and organisations. Even if religious leaders and organisations are trusted (and some are, of course), religion is typically understood to be good at building inter-group trust, not intra-group trust. In countries like India and Nigeria, where religious conflict is a significant problem, care must be taken that religious messages on corruption do not create (further) divisions between adherents of different religions. Rather than encouraging or supporting individual leaders or religious organisations, support would be best targeted at inter-faith initiatives where the risks of unintended consequences (i.e., creating even more religious conflict) are lower.

1 Blundo, G. & Olivier de Sardan, J-P. 2006. Everyday Corruption and the State: Citizens and Public Officials in Africa, London: Zed Books.

2 Marquette, H. 2011 (forthcoming). Religion and Attitudes towards Corruption in India and Nigeria, RaD Working Paper, available at www.rad. bham.ac.uk (see the website for further working papers and policy briefs).

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116 Not only are attitudes not the same thing as perceptions, respondents' own attitudes affect the way they respond to survey questions regarding perceptions. This should be taken into account when looking at survey data.

4.3   Data sources

Anti-corruption tools and indicators are based on four types of data, which themselves are based upon first-hand knowledge or direct experience. These are:

- **Written de jure provisions:** These include standards, codes and treaties such as the UNCAC, IMF codes on fiscal transparency and national legislation.
- **Event reports:** These are reports or recordings of events which account incidents of corruption or demonstrations of system integrity. These can be from media sources, non-governmental organisations, as well as watchdog organisations such as anti-corruption agencies or supreme audit institutions.
- **Narrative reports:** These are reports produced by observers and researchers such as international organisations, government departments or companies.
- **Surveys:** These can be disseminated via the internet, the post or through interviewers.

In addition to these first-hand or primary sources there are other secondary sources such as:

- **National Audit / Auditor-General reports:** Analyses of the financial conduct of other government departments, agencies or public bodies usually carried out by a notionally autonomous government body.
- **Public Anti-Corruption Agency/Commission reports:** Reports by bodies established to investigate incidents of corruption.
- **Political economy analyses:** Analyses of country context to identify factors and dynamics that influence governance and would impact upon governance reform.
- **Integrity assessments:** Evaluations of a country's safeguards against corruption based, in part, through a review of laws, policies and existing research studies.
- **Academic studies:** Work undertaken by academic researchers, often synthesising primary sources.
- **External risk assessments:** Assessments produced primarily for foreign actors, such as investors and companies, usually based on written material, media reports and local informants.

The choice of data source can have an impact on relations between the assessor and the assessed. Engaging with the country under review and incorporating locally-produced documentation can help build capacity and support local review processes. In fact, analysing national legislation and using auditor general and anti-corruption agency reports might provide more legitimacy as a basis of dialogue with partner country authorities than externally produced reports. Results of widely available and well known surveys (even if done by external actors) might also represent very good entry points for discussions, notably if they are used by local media. Again, this highlights the need to think about how different data sources, including political economy analysis (PEA), can be combined in order to produce the best result.

4.4   Challenges of anti-corruption tools and indicators

Though governance indicators are widely used, in many cases it seems users do not grasp their strengths, limitations, and possible alternatives. No single source of data or tool will offer a definitive measurement and an accurate and valuable assessment depends on an understanding of the various tools and indicators and tailoring them to the context. Users should be aware of the areas of confusion and the limitations and pitfalls of tools and indicators.

Avoid only using the popular but inappropriate indicators (especially to guide reform): Following the launch of the UN's Human Development Index in 1990 there was a proliferation of cross-country indices on a range of political, social and economic issues. The Transparency International's Corruption Perception Index, which started in 1994, and the World Bank's Governance Indicators (WBGI), which started in 1996, became the most noted indices on corruption. These two indicators are based on perception data and though such data correlates well with experience data from newer indices[117], the CPI and WBGI are less useful in programmes and projects than newer, more focused tools. Perception data, being slow to change, will not be sufficiently responsive to efforts to fight corruption. The CPI and WGI can tell us very little about corruption within a country. As such, they may be useful in political dialogue or in advocacy but do not provide appropriate data for national or sectoral level planning. Appropriate assessment tools for programming should provide a comprehensive and nuanced assessment of a specific corruption issue in that specific context. Despite this, there continues to be an over-reliance on a small number of the available indicators such as the CPI and WBGI[118], most likely due to lack of user familiarity with other tools.

Be aware what makes up an indicator: Some contend that governance indicators do not, in fact, measure the governance aspects they claim to[119]. Some[120] criticise the widely-used World Bank Worldwide Governance Indicators,

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117 Heinrich, F. and Hodess, R., 2011, 'Measuring Corruption', in Graycar, A. and Smith, R. (eds),
   'Handbook of Global Research in Corruption', Cheltenham: Edward Elgar.

118 Arndt C., 2008, 'The Politics of Governance Ratings', International Public Management Journal, vol. 11, no. 3, pp 275 – 297.

119 Thomas, M.A. 2007. "What do the Worldwide Governance Indicators measure?", Working Paper, Johns Hopkins University.

120 Iqbal, K. and Shah, A., 2008, 'How Do Worldwide Governance Indicators Measure Up?', World Bank

arguing that it lacks a conceptual framework of governance, are biased towards Western business perspectives, ignore citizens' evaluations and should not be used for comparisons between countries and over time. Many tools are based on aggregates of large datasets which when aggregated can produce markedly different conclusions than based on more specific data or differing methodologies. Margins of error in assessment must be taken into account; countries that seem to have progressed or worsened in rankings in comparison to other countries may not have done upon closer inspection.

Do not try to reduce the unquantifiable to numbers: As Albert Einstein put it 'Not everything that can be counted counts, and not everything that counts can be counted'. Essentially, not everything can be reduced to numerical values and that which can be measured numerically may not be the most crucial information. Contextual and qualitative information is often necessary to supplement quantitative assessment data and provide a true picture of corruption or progress of anti-corruption reforms.

When required choose indicators that are designed to guide policy: Assessments may identify weaknesses in governance systems that give rise to corruption but do not give any indication for what can or should be done to resolve these weaknesses. The most effective assessments would provide information that would guide policy-makers as to where to act – i.e., 'actionable' indicators – and to suggest which changes would most improve governance weaknesses – i.e., 'action-worthy'.

Ensure input and output indicators complement each other: Input indicators relate to the existence and quality of institutions, rules and procedures. Output or outcome indicators are the results or behaviour of these institutions, rules and procedures. In an assessment these should complement each other. For example, if the output indicator is transparency in local government operations a corresponding input indicator would be the existence of public fora for citizens to discuss their view with locally elected officials (UNDP, 2008[121]). Another example would be an output indicator of perception of equal participation of women in all aspects of social and political life, and the corresponding input indicator could be percentage of journalists or civil servants who are women (ibid). By ensuring that input and output indicators assess the same issue and work in complement, the assessment conclusions would be more actionable and valid.

Ensure you pay attention to the impact of corruption on disadvantaged and the most affected groups: Corruption affects different individuals in society in varying degrees. In particular the poor suffer disproportionately through forgoing income for bribes and through worsening service quality. Also, women more often than men tend to be the victims of corruption. Assessments need to be sensitive to the impacts on different groups and in particular be pro-poor and gender sensitive. The indicators in the previous paragraph on complementary input and output indicators are examples of pro-poor and gender sensitive indicators selected from UNDP's Framework for Selecting Pro-Poor and Gender Sensitive Indicators[122].

When appropriate measure integrity rather than measuring corruption: As opposed to measuring corruption there are indicators that instead focus on the effectiveness of existing corruption safeguard mechanisms. For example, Global Integrity's Integrity Indicators assess the strengths and weaknesses of countries' public sector anti-corruption mechanisms by collecting data on the legal anti-corruption framework, as well as on its practical implementation. Integrity assessments are often more 'actionable' than corruption assessments as they identify weaknesses or opportunities for improvement within the existing mechanisms.

Take into account differences between de jure and de facto: A law may be established but this means little unless it is implemented. There are often discrepancies between formal policy statements and legislation, and observed practices. Changes in law or organisational reform, including the establishment of anti-corruption agencies, may not translate into impact on the ground. Consequently corruption assessments based excessively on formal statements may not capture real levels of anti-corruption efforts. Such discrepancies between reforms and reality can be due to the reforms being inappropriate, there being incentives that are perverse, lack of political will or a general lack of capacity to enact changes. Effective political economy analysis could provide useful insight to identify whether legal and organisational reforms (de jure) are likely to lead to actual changes in behaviour (de facto).

Do not assume causation where there is only correlation: It is often difficult to attribute changes in corruption indicators to individual events or drivers. Various events or drivers may only be one of several factors which precipitate change in corruption and in corresponding indicators.

Be aware of data limitation: In many cases data may be lacking or unreliable. This is especially so in fragile or conflict-affected states. Data insufficiency is an important constraint when undertaking assessments. Data collection processes may have to be started from scratch and it may take time to produce comprehensive and reliable data from which conclusions can be drawn.

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121 UNDP, 2008, 'A User's Guide to Measuring Corruption Guide', UNDP Oslo Governance Centre.
122 UNDP, 2006, 'Measuring Democratic Governance: A framework for selecting pro-poor and gender sensitive indicators', UNDP.

Section 5: Practical Steps

Key Points:

Step 1: Understand the country political economy by utilising existing analysis carried out by other donor partners or by commissioning a study.
Step 2: Identify purpose, level and suitable data beforehand. Different corruption assessments can serve different purposes or aide understanding of issues relevant to a specific sector or issue.
Step 3: Explore the range of tools and identify and adapt the most appropriate tools, if available.

It is important to try to ensure, where possible, consultation with stakeholders and policy dialogue to build informed, responsive, constructive and sustained relationships between European Union staff, government officials, development partners and non-state actors.

Corruption assessments can be quite straightforward. It is often not necessary to take extensive measures to undertake a corruption assessment since a wide range of resources may already be available. The following section proposes key steps, some of which users may have already carried out (i.e. Step 1) or will have been carried out (i.e. Step 3). These suggested steps are proposed for EU staff for programming and operation implementation as well as for facilitating reporting requirements and dialogue with partner countries.

Step 1: Understand the country political economy

Assessments should take place with a sound understanding of the country's political economy. A robust political economy analysis would help identify scope for change and to ensure that the areas assessed would be in control of policy-makers. Ultimately, assessments would be most valuable where intervention is possible.

Essentially, political economy analysis is concerned with the interaction of political and economic processes in a society: the distribution of power and wealth between different groups and individuals, and the processes that create, sustain and transform these relationships over time. The idea behind this approach is that by basing country and sector strategies, and programme design, implementation and monitoring on a clearer understanding of the political realities should result in greater development effectiveness.

Donors have developed a range of analytical tools to assess the political economy, including the Department for International Development's Drivers of Change approach and the Strategic Governance and Corruption Assessment (SGACA), development by the Netherlands. The European Union has also developed an assessment framework, within their Programme and Project Cycle Management (PPCM) guidelines.

The European Commission's Programme and Project Cycle Management (PPCM) Assessing the Country Context is designed to help EU Delegations better understand the underlying factors that are shaping the incentives and behaviour of key stakeholders in partner countries. The aim is to make better-informed judgements about what kind of external interventions could best contribute to strengthening local incentives and capacity to improve development outcomes.

The methodology draws significantly on the SGACA approach (see Box 15), with some updating and a more operational focus. As with the SGACA, the framework prompts the analyst to consider the dynamic interaction between three sets of factors through consideration of a number of broad questions on:
- Foundational Factors that fundamentally shape the broad characteristics of the state and political system, including the history of state formation, sources of revenue, the country's geostrategic position, and embedded social and economic structures. Many will have very long-term origins, and will tend to change only slowly.
- Rules of the game including formal and informal institutions of the state, civil society and the private sector that shape how power is shared and how relationships are managed. These institutions can be «sticky» (resistant to change), but can also change significantly over the medium term, either through direct changes to formal rules or in response to more indirect pressures (for example, changes in global or regional markets) that change incentives and power relationships.
- Here and Now covers both how political processes are playing out on a day-to-day basis («games within the rules»), and ways in which the current context and specific «events» shape these processes (for example an impending election, an external security threat, a financial crisis, or perhaps a natural disaster).

Following this analysis, the Framework guides thinking about the underlying factors supporting or impeding development in a particular country context; what local pressures exist to improve development outcomes; and the scope for effective external intervention. There is no direct read-across from analysis to programming: the development challenges revealed by political economy analysis may not be amenable to short-term, aid funded solutions. To be effective, Delegations

need to find strategic ways to engage with the political economy factors at work in a specific country context over the medium term, with a view to supporting a progressive direction of change. Such strategies may involve indirect ways of shifting incentives of key actors, and encompass trade and diplomatic policies as well as aid.

Box 16: The Strategic Corruption and Governance Assessment (SGACA)

This Framework was developed by the Clingendael Institute for the Netherlands Ministry of Foreign Affairs and its Embassies. It was designed as a tool to build on and enhance previous efforts at analysing the governance climate in partner countries by facilitating a more strategic approach. The purpose of this work is to provide a basis on which Embassies can critically review country-level strategies and priorities, to see whether things could or should be done differently, or whether different things could or should be done. The key part of the framework is the Power and Change Analysis, which is the heart of the framework and focuses on non-formal practices and relationships and links between formal and informal institutions. It seeks to explain the basis for state-society relationships and high levels of corruption, low legitimacy of state institutions, weak commitment to human rights and poverty reduction. Three sets of factors are addressed: the major characteristics of a political system, which change slowly; state-society interaction, which change in the medium term and the interaction of actors in the current context, which change quickly. The findings from this analysis are discussed in a two-day workshop and a Strategic Choices document is developed, which presents the outcomes.

http://www.clingendael.nl/publications/2007/20071000_cru_occ_unsworth.pdf

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Step 2: Identify purpose, level and suitable data

Think through what the purpose of the assessment is and identify which level will be targeted. Choose the most appropriate data sources, keeping in mind the environment in which the assessment will take place. The overall purpose of the assessment will help in identifying the level of analysis and type of data required (see Section 2).

Box 17: Combating corruption through Performance Assessment Frameworks (PAF) for Budget Support

Budget support has become an increasingly important modality for the provision of aid. Evidence suggests that countries that have received large amounts of budget support tend to perform better against several MDG indicators than those who have received little or no budget support, irrespective of policy environment, income status and aid dependency1. There are, however, concerns that budget support enables corrupt officials to have greater discretion to direct fungible aid to serve their own personal interests.
In response, 'corruption related indicators' have been integrated by donors into the Performance Assessment Frameworks (PAFs) used to monitor the result of budget support. However it is unclear how effective these are. For example, NORAD's Malawi PAF includes the average number of months for corruption cases to be completed and the percentage of corruption cases completed within 12 months. This indicator only covers those cases of corruption which are prosecuted in the courts and there may be other reported instances of corruption where those involved are not punished through the courts.
Forthcoming work by the U4 Anti-Corruption Centre (late 2011) will explore the ways in which anti-corruption and public integrity have been addressed through the selection of PAF indicators. It aims to identify the stronger indicators and ways in which global standards on corruption such as the United Nations Convention against Corruption can better be integrated.

Beynon, J. and Dasu, A., 2010, 'Budget Support and MDG Performance', Development Paper No. 2010/01, European Commission
http://ec.europa.eu/development/icenter/files/europa_only/budget_support_MDG_performance_development_paper_en.pdf

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The purpose of the assessment may, for example, be to form the basis of decisions on budget support. As the Green Paper (2010) on EU Budget Support to Third Countries suggests, following an analysis of the political economy, including government efforts to address identified weaknesses and available domestic resources, the objectives of the cooperation and the most appropriate aid can be decided accordingly[123].

A number of tools have been developed specifically to assess budget transparency and corruption reforms in order to give more confidence to donors contributing funds to budget support. The Open Budget Survey (OBS) is one such tool and is based on a detailed questionnaire to collect data on the public availability of budget information and other accountable budgeting practices. This framework aims to: (i) assess and document the state of budget transparency and accountability; (ii) provide standards that governments can use as guides for improving their budget systems and processes, and (iii) establish benchmarks against which governments can measure their progress.

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123 See: (http://ec.europa.eu/development/icenter/repository/green_paper_budget_support_third_countries_en.pdf)

Many of the questions in the OBS focus on the contents and timeliness of the key budget documents that all countries should issue, according to generally accepted good practice criteria for public sector financial management. The questionnaire also covers additional topics of importance to civil society, including factors related to legislative oversight, such as whether or not the legislature holds public hearings on the budget, and on the role of the country's independent national audit office, also known as the supreme audit institution (Performance Assessment Frameworks are also used in this context, as outlined in Box 16 above).

Corruption and poor governance manifest themselves differently according to the nature of service delivery and the country specificities. It is therefore of key importance to take into account the country and sector contexts and specificities to identify the right entry points and drivers in order to have the most effective responses in prioritising interventions both in terms of policy dialogue and programmes and project design. The European Commission should look at a sequenced approach aiming at identifying risks and leakages in sectors, setting priorities, supporting targeted anti-corruption measures and monitoring the progress made, notably in terms of the influence they would have on the achievements of the most off-track MDGs.

A key starting point is to analyse the political economy at sector level. Various tools have been developed to understand the sector context, including the World Bank's Problem Driven Governance and Political Economy Analysis (PDGPEA). Box 17 below briefly outlines examples where sector level analysis, including the PDGPEA, has been used. This framework addresses governance and political economy analysis relating to particular problems, challenges, or opportunities. Importantly, 'problem-driven' does not mean focusing exclusively on areas of difficulty but rather on specific questions and challenges. Broadly speaking, the PDGPE has three main steps: (i) identifying the problem, issue or vulnerability to be addressed, (ii) mapping out the institutional and governance arrangements and weaknesses, and; (iii) drilling down to the political economy drivers, both in terms of identifying obstacles to progressive change, and in terms of understanding where potentially a 'drive' for positive change could be emerging from. This basic approach can be applied to analysis at country, sector or project levels – with appropriate adaptation and tailoring to each level.

The European Commission has also developed a framework for 'Analysing and Addressing Governance in Sector Operations'. This framework focuses on three core elements of governance in a particular sector: context, actors as well as governance and accountability relations. Analysing the context of sector governance: draws on many general context analyses that are available from domestic and other sources. Mapping the actors – their interests, power and incentives aims to identify organisations and individuals which are main stakeholders in the sector and those presently playing an important role in governance and accountability relations in the sector. The framework proposes six clusters of actors (non-state actors; checks and balance organisations; political system/government; core public agencies; frontline service providers; and, donors, regional and international organisations). Some of the actors play different roles and, thus, belong to more than one cluster.

The third step helps to analyse the governance and accountability relations between key actors in sector governance. When looking at governance relations, the first task is to analyse the 'mix' of governance mechanisms that determine the functioning of a sector. Four governance mechanisms, through which authority and power can be exercised, are identified. The final step synthesises the findings from the previous three steps into a summary matrix. The matrix includes key features shaping and describing existing governance relations in the sector and key strengths, opportunities, weaknesses and threats for change in governance and accountability on the demand and supply sides, respectively.

Box 18: Sector Political Economy Examples: Zambian Agriculture and Dhaka Urban Transport

In 2002, DFID commissioned a study on the 'Drivers for change in Zambian agriculture'. This study built on the first so-called Drivers of Change study conducted in Bangladesh in 2002. At that point in time, DFID's Drivers of Change approach had not yet developed a framework that could be applied to analysis at sector level. Therefore, the study applied some of the lessons learned from country-level Drivers of Change study in Bangladesh to the Zambian agriculture sector. The design of the sector-level Drivers for Change study centres on sector policy environments, policy making processes in the agricultural sector and main political and other actors that operate within the sector.
http://www.odi.org.uk/work/projects/03-food-security-forum/docs/d4c1.pdf

The Work Bank has undertaken a study applying the PDGPEA to the urban transport sector in Dhaka, Bangladesh. The purpose of the exercise was to increase the World Bank's understanding of the reasons why unsafe, polluting buses continue to operate in Dhaka's roads, despite efforts to regulate and reform bus operations. It utilises methods outlined in the World Bank's PDGPE and Political Economy Assessments of Sector and Project Levels. The assessment was therefore operationally focused and linked to the design of the Bank's support of the Clean Air and Sustainable Environment (CASE) project in Bangladesh.

*See http://api.ning.com/files/-HcEeNyYj-JoRNIX7J-UF8Vly1RFc3K4D1HAopdQGmAZnkqtPipv6ZPZ5lJh2c2pkPgNzTWgllVVEbOCegrVRTUzPf
yNH6G/PoliticalEconomyAnalysisofDhakaUrbanBusOperations.pdf

Another useful tool to help understand corruption risks at different levels is Value Chain Analysis. This tool helps in identifying risks and leakages by taking into account specific sector structures, relevant stakeholders, production processes and market structures. A value chain analysis[124] looking at the various processes undertaken and actors involved for delivering services could help to identify the main vulnerabilities and related corruption risks at each stage of the chain and to some extend provide information on the probabilities for risks occurring.

Box 19: Value chain analysis

Value Chain Analysis is a tool used predominantly by the private sector to break down the chain of activity when producing and distributing a good and identifying the key activities which add value. Through this analysis, it is possible to identify weaknesses in supply chains and distribution networks.
Figure: Value Chain Analysis in the Health Sector.
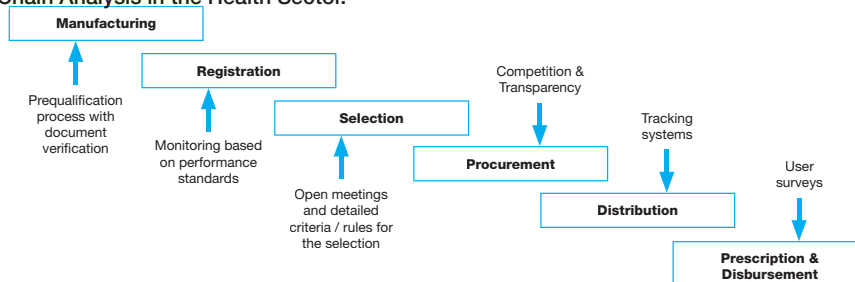
The World Bank has applied the value chain approach to analyse process flows in projects and sectors. Through Value Chain Analysis, analysts can assess risks and identify elements vulnerable to fraud and corruption. It can also be used to develop strategies for combating corruption and improving governance.
This analysis can be done either simply, through a more formal approach, or through a resource intensive approach. The simple approach uses anecdotal information from government officials, end-use consumers and others who work in the sector. The more formal and comprehensive approach involves interviewing government officials, holding discussions with experts, consulting with stakeholders and the involvement of local consultants with experience in the sector. The most resource intensive approach draws information from international consultants with an extensive technical background as well as from local consultants who are familiar with the political and economic conditions in the sector. There is no 'right' approach to Value Chain Analysis and even the simplest approach can identify eighty per cent of the risk.
The Value Chain analysis is a useful tool for flagging up hotspots but has limitations. For example, there is rarely the degree of control in the process flows of projects and sectors in developing countries as there would be in product development in developed countries.

Source: GAC-in-Projects How-To Notes: Value Chain Analysis
http://siteresources.worldbank.org/EXTGOVANTICORR/Resources/3035863-1285875404494/100501_GACIP_ValueChainAnalysis.pdf

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124 *Notably used by the World Bank and the GTZ.*

Step 3: Explore the range of tools and identify and adapt the most appropriate tools, if available

It is important to have a comprehensive understanding of the available tools and their indicators. The Transparency International GATEway Project aims to undertake this and provide a database of tools accessible to users. When using GATEway, users need to breakdown the indicators and identify what each indicator is measuring, their conceptual focus, measurement methodology and other strengths and weaknesses.

Keeping purpose, level and data suitability in mind, users must identify tools and indicators that most suit those. If the assessment is to guide policy, it is important that the indicators are actionable, action-worthy and complementary. In some cases, it may be necessary to generate unique research to produce tools and indicators suitable to the objectives in that situation. It is important to invest in proper design, which is easier to do if the purpose, level and data suitability have already been established.

Section 6: What are the best written resources to help choose tools and indicators?

There is a wide (and often confusing) range of literature available relating to the available tools and indicators on assessing corruption. As a starting point, the following resources are recommended:

GATEway Project
http://www.transparency.org/tools/gateway

The GATEway project, funded by EuropeAid and implemented by Transparency International, is a stock-taking exercise to compile, map and categorise existing corruption and anti-corruption assessment tools. It will produce a web platform and online database of corruption tools; an accompanying manual; an analytical paper on strengths and weaknesses of tools, gaps and best practices; and help develop a new tool responding to 'gaps' in corruption indicators. The project aims to assist users of corruption assessment tools to better differentiate between the tools and to identify appropriate tools for their situation.

Governance and Social Development Resource Centre (GSDRC)
http://www.gsdrc.org/

The GSDRC houses a searchable document library, a research helpdesk and various topic guides and introductory guides on issues of governance, including corruption. Of particular relevance are:
• Political Economy Analysis Topic Guide: Governance Assessment
http://www.gsdrc.org/go/topic-guides/political-economy-analysis/governance-assessment

This section of the GSDRC Political Economy Analysis Topic Guide provides an overview of assessing governance in complement to political economy analysis and provides links to other resources.

U4 Anti-Corruption Resource Centre
http://www.u4.no/

The U4 Anti-Corruption Resource Centre assists donor practitioners in more effectively addressing corruption challenges through their development support. Like the GSDRC, U4 operates a helpdesk with searchable queries relating to corruption, including measuring and assessing corruption.

UNDP, 2008, 'A User's Guide to Measuring Corruption Guide', UNDP Oslo Governance Centre
English:
http://www.undp.org/oslocentre/docs08/users_guide_measuring_corruption.pdf
French:
http://www.undp.org/oslocentre/docs08/users_guide_measuring_corruption_french.pdf
Spanish:
http://www.undp.org/oslocentre/docs08/users_guide_measuring_corruption_spanish.pdf

This guide, jointly produced by UNDP and Global Integrity, provides practical guidance as to how best to measure corruption and how to use the data generated by measurement tools to inform policy formulation and further reform agendas. It is composed of a literature review, a summary of findings from expert interviews and country case studies.

World Bank Governance & Corruption (GAC) in Projects Database
http://go.worldbank.org/C4SVHWDD00

This site provides a range of tools, practice notes and examples designed to help development practitioners improve outcomes by promoting good practice in integrating governance and corruption issues into programme and project planning and evaluation. It includes, for example, Guidance Notes on value chain analysis, political economy analysis and other risk analysis tools.

CONCLUSION

This concept note has set out to provide relevant insights into the current thinking on anti-corruption in developing countries. It aims to provide the EU staff in head quarters and delegations with useful tools to analyse corruption vis-à-vis partner countries; to become better equipped to support the implementation of anti-corruption strategies and policies; and to better identify relevant anti-corruption measures so as to improve the mainstreaming of anti-corruption issues in the EU development assistance.

Indeed, the above chapters do not attempt to provide a general or broad-spectrum remedy for corruption; there is no 'one size fits all' process for dealing with corruption but appropriate solutions must always be local and context-specific.

Main Concepts

How corruption is defined affects how it is viewed, which policy approaches are adopted, and which approaches are deemed to be legitimate. Corruption – because of its multidimensional nature – cannot be understood through only one category of definition. Policy-makers, seeking to improve the design of anti-corruption programmes, should incorporate an understanding of the legal, socio-economic and anthropological definitions of corruption. Rather than seeking a definitive definition, policy-makers should understand that each definition provides unique insights.

There are a number of useful forms and typologies of corruption such as grand versus petty corruption, and active versus passive corruption. For the public sector, the United Nations Office for Drugs and Crime (UNODC) has developed a taxonomy of forms of corruption forms such as bribery, embezzlement, and abuse of discretion. These are useful for understanding various corrupt transactions in terms of their level and impact.

There are several domestic and external mechanisms underlying the emergence and development of corruption. An absence of economic development can encourage corruption, which in turn restricts development and compounds poverty but there is no firm, fixed correlation between any particular level of economic development and the incidence of corruption. Economic liberalisation, state intervention and foreign investment can have unintended consequences including encouraging corruption. Weak institutions, inequality and external drivers such as international crime and offshore banking can also play a part.

The consequences of corruption are not limited to economic inefficiencies; it also reduces the provision of welfare in society, undermines democracy and political institutions, contributes to social inequalities and conflict, constitutes a violation of human rights and can have a potentially devastating impact upon the environment.

Addressing Corruption in a Globalised World

International efforts to recognise and prevent corruption have only gained popularity since the 1970s. The US Foreign Corrupt Practices Act (FCPA) of 1977 was introduced following a number of corruption scandals involving Western-owned multinationals abroad. In 1997, OECD member countries decided to curb bribe-giving in international business with the creation and ratification of the 1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. Following this, a number of multilateral conventions have since been negotiated, adopted and ratified, setting standards for the prevention, detection and sanctioning of corrupt behaviour.

The United Nations Convention against Corruption (UNCAC), which represents one of the most recent and extensive Conventions to specifically recognise and tackle corruption, was adopted in 2003. UNCAC sets out to define and criminalise the actions of corruption and requires States Parties to put in place effective anti-corruption policies. It aims to provide a comprehensive, universally accepted legal instrument to prevent and combat corruption. In September 2005, the European Community, represented by the European Commission, signed the 2003 UNCAC and ratified it in November 2008.

A number of regional anti-corruption conventions have also been adopted. This includes the Inter-American Convention against Corruption of the Organisation of American States (OAS), the Council of Europe Criminal Law Convention on Corruption, and the African Union Convention on Preventing and Combating Corruption.

A number of initiatives have also been developed over the last few years to address the problems that resource-abundant countries can face. This includes the Extractive Industries Transparency Initiative, the Kimberley Process Certification Scheme (for diamonds) and the Forest Law Enforcement, Governance and Trade.

The EU staff particularly in delegations can support the use of conventions through their work. They can support lobbying for the signature and ratification of the conventions, as well as providing technical support and funding for their implementation and monitoring.

Assessing Corruption and Monitoring Anti-Corruption

Assessing corruption or monitoring anti-corruption efforts can help mitigate risks inherent in development programmes and projects. However, corruption is highly variable and dependent on context. It can only be measured indirectly and requires nuanced and tailored measurements.

When designing a corruption assessment, users must ask themselves what is the particular purpose of their assessment; what is the level or focal point of their analysis; and what data is most suited for it. Thinking through these questions allows users to find an assessment tool that better meets their objectives and is suitable for their context.

The purpose of corruption assessments has evolved from being used primarily to help promote the fight against corruption, to using them to compare levels of corruption over time and space, to using them to provide a comprehensive and nuanced assessment of corruption issues in a specific context. Purposes for corruption assessments now include diagnosis, early-warning, awareness-raising, coalition-building, monitoring, research guidance, policy dialogue, fiduciary risk and programme failure. For policy-makers designing corruption assessments, clearly identifying the purpose or objective of the assessment is a crucial first step to preparing an assessment.

Another aspect that is essential is to consider the area of focus. In particular, is the area 'corruption' or 'anti-corruption'? Measuring corruption is based on perceptions and experiences of the general population, public sector, private sector and/or experts. Anti-corruption or integrity assessment is based on compliance monitoring of local, national or international policies and conventions as well as diagnostic assessments of institutions, processes and/or sectors at the local level.

There are different levels at which the assessment could focus for which different tools would be appropriate. There is significant overlap between levels (e.g. Global Integrity can be multi-country, supranational and multi-level). Levels can be defined as supranational, multi-country, national, sub-national, sectoral, organisational and multi-level. The extent of corruption and perceptions of corruption can vary significantly between levels. A corruption assessment with a focus or emphasis on a particular level may not be generalisable. This is especially the case in relation to the public and private sectors where inclusion or exclusion of the private sector perceptions in an assessment can significantly affect the results.

Good data is essential for a good assessment; however, corruption as an illicit activity is often intentionally obscured, making it hard to obtain good data. Furthermore, in developing countries there may not be the capacity to gather relevant data. Corruption assessments are designed to make assessments based on limited data, but assessments are ultimately determined by what data is collected, how it is collected and by whom. The choice and method of data collection has profound impact on the results. Various methods and combinations of methods can be employed to gather information. The main methods are: desk-study, interviews, focus group, postal surveys, internet surveys and expert coding of narrative reports. Data can either be objective—indisputable facts, such as policy measures; perception—based on people's opinions; or composite —a mixture of objective and perception measures.

Perception data may be most valuable where objective measures are weak or non-existent, but it is prone to bias. There are time lags, with perceptions often slow to change. Some environments stifle dissent or contain a culture reluctant to air criticisms or negative opinions. Those outside of the area may have strongly differing views to those within it. An increased awareness of corruption following a recent or well-publicised series of incidents of corruption may mean more acts are classified as corruption, building a strong but false sense of corruption. A high-profile anti-corruption drive may increase the perception of corruption just when corruption is actually starting to be effectively combated. Perception data must thus be interpreted in respect to the context.

Anti-corruption tools and indicators are based on four types of data, which are based upon first-hand knowledge or direct experience: written de jure provisions, event reports, narrative reports and surveys. In addition to these first-hand or primary sources, there are other secondary sources, such as national Audit / Auditor-General reports, and public Anti-Corruption Agency/Commission reports or academic studies.

No single source of data or tool will offer a definitive measurement, and an accurate and valuable assessment depends on an understanding of the various tools and indicators and tailoring them to the context. One should be aware of the areas of confusion and the limitations and pitfalls of tools and indicators. This includes an over-reliance on popular but often inappropriate indicators, such as Transparency International's Corruption Perception Index and the World Bank's

Governance Indicators. When designing corruption measures, it is important that the tools and indicators used are fit for the purpose for which they are intended.

One should also be aware what makes up an indicator and should not try to reduce the unquantifiable to numbers. Indicators, and especially anti-corruption indicators, have underlying normative assumptions that are important to take into account.

When required, users should choose tools and indicators that are designed to guide policy – so-called 'actionable' indicators. Tools, especially some of the most popular tools, are suited to raising awareness of corruption but not to guiding policy-makers on suitable reform.

Input and output indicators should complement each other and attention is to be paid to the impact of corruption on disadvantaged and the most affected groups. When appropriate, measure integrity (i.e. the effectiveness of existing corruption safeguard mechanisms) rather than measuring corruption. Take into account differences between de jure (i.e. written provisions) and de facto (i.e. the day-to-day implementation of such provisions). Finally, be aware of data limitation and do not assume causation where there is only correlation.

Corruption assessments can be quite straightforward. It is often not necessary to take extensive measures to undertake a corruption assessment. The key steps are: (1) understand the political economy (making use of existing analyses whenever possible); (2) identify purpose, level and suitable data; (3) explore the range of tools (with help from the GATEway Project) and identify and adapt the most appropriate tools, if available; and (4) ensure monitoring.

Suggested Reading

General corruption reading

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Useful websites

- Transparency International—www.transparency.org
  Includes a wide range of resources, including their annual reports, corruption perception and bribery lists and a number of working papers covering everything from procurement to nation-building to youth and much more

- U4 Anti-Corruption Resource Centre—www.U4.no
  Includes a number of their own publications as well as summaries of, and links to, a large number of corruption resources, grouped by theme for ease of use. U4 also has a number of resources, including a corruption glossary, FAQs and tool kits

- Governance & Social Development Resource Centre—www.gsdrc.org
  Includes an 'Anti-Corruption Gateway', as well as wide-ranging coverage of governance topics, such as civil service reform, institutional development and service delivery

- OECD Bribery & Corruption— http://www.oecd.org/topic/0,3373,en_2649_37447_1_1_1_1_37447,00.html
  Includes resources particularly on bribery and the OECD convention, best practice guides and more.

- United Nations Convention Against Corruption (UNCAC)— http://www.unodc.org/unodc/en/treaties/CAC/index.html
  Includes the full text of the convention as well as a range of tools, technical guides and listing of related events

- World Bank Anti-Corruption site—http://go.worldbank.org/QYRWVXVH40
  Includes access to tools and data, annotated bibliographies and a range of other resources

- Anti-Corruption Research Network—http://corruptionresearchnetwork.org/
  Contains access to corruption-related research, notification of events and so on.

- Global Integrity—http://www.globalintegrity.org/
  Independent think-tank providing reports and toolkits on governance and corruption

ANNEX 1: INTERNATIONAL CONVENTIONS AGAINST CORRUPTION

Name	Year	Reach	Measures	Advantages	Weaknesses	Offences
UNCAC	2003	Global	Prevention, criminalization, international cooperation	Innovation - asset recovery, broadest range	Monitoring Not all art. binding	Public/private recognized
UNTOC	2001	Global	Prevention, criminalization, asset recovery, international cooperation	Joint investigations, special investigative techniques	Reservation possible	Public
ECOWAS Protocol on the Fight against Corruption	2001 Not in force	Sub-regional	Prevention, criminalization, international cooperation	Wide scope	Not in force	Active and passive bribery in the public and private sectors; illicit enrichment, false accounting
OAS Inter-American Convention against Corruption	1996	Regional/ inter-regional	Prevention, criminalization, international cooperation	First instrument in this field which recognizes the international reach of corruption and the need to promote and facilitate cooperation		Public
ADB-OECD Action Plan	2001	Regional Asia-Pacific	Prevention, criminalization, international cooperation measures, extradition, recovery of assets, 3 pillars (integrity of public service, private sector, involvement of civil society)	Provides a regional cooperation framework providing improved mutual law enforcement assistance, including extradition, investigations, as well as confiscation, seizure and repatriation of proceeds of corruption	All principles are legally non-binding creating risk of failure to develop common standards. Preventive provisions drafted very broadly, allowing for wide interpretation and discretionary practice.	Limited interpretation of corruption offences, only including bribery and money laundering, non-binding
OECD	1997	Global/ inter-regional	Criminalisation and mutual legal assistance measures, as well as requirements regarding company accounting	Addresses supply side of international corruption with regard to the main exporting nations. Provides for extensive and rigorous monitoring of countries´ compliance with the Convention	Unresolved: foreign political parties, role of off-shore centers in bribery transactions.	Bribery - foreign public officials
SADC Protocol against Corruption	2001	Regional/ sub-regional	Prevention and enforcement, judicial cooperation (MLA, extradition)	First sub-regional anti-corruption treaty in Africa, broad range of preventive measures, confiscation		Public
AU Convention on Prevention and Combating Corruption	2003	Regional	Prevention, criminalization, regional cooperation, mutual legal assistance and recovery of assets	Comprehensive approach, mandatory provisions on transparency in political party funding, on declaration of assets by public officials, restrictions on immunity	Not in force	bribery (domestic or foreign), diversion of property by public officials, trading in influence, illicit enrichment, money laundering and concealment of property Public and private
CoE Civil Law Convention	1999	Inter-regional	Civil law remedies, compensation for damage from corruption; invalidity of corrupt contracts (null and void); whistleblower protection.	broad definition, wide scope, monitoring	No restriction on the use of banking secrecy	Public and private sector
CoE Criminal Law Convention	1999	Inter-regional	Criminalization, regional cooperation, asset recovery	Broad range of offences, strong monitoring	Few preventive measures Parties may make reservations	Public and private, including bribery, trading in influence, money laundering, accounting offences

ANNEX 2: OECD-ADB ANTI-CORRUPTION INITIATIVE IN ASIA-PACIFIC

In 1999, governments in Asia-Pacific affirmed their resolve to cooperate in their activities to fight corruption via the launching of the Anti-Corruption Initiative for Asia and the Pacific. The initiative, jointly led by the Asia Development Bank (ADB) and the OECD, 'sets out the goals and standards for sustainable safeguards against corruption in the economic, political and social spheres of countries in the region'[125].

The Anti-Corruption Action Plan, developed within the framework of the Initiative, is structured under the following three pillars:
• Developing effective and transparent systems for public service;
• Strengthening anti-bribery actions and prompting integrity in business operations; and
• Supporting active public involvement[126].

Membership is open to any economy within the region that both recognize the threat of corruption and is actively taking a stance against it. To date, twenty-eight countries and jurisdictions in the Asia-Pacific region have endorsed the Plan and accepted its implementation mechanism.

In reviewing the Initiative's implementation, it appears well structured with a steering group that defines priorities and activities, while an Advisory Group is available with provision for technical advice. The three implementation mechanism contains three components: fostering policy dialogue and measuring progress, providing analysis to support the policy dialogue, and capacity building to enable members to thoroughly implement the reforms[127].

In the year of the initiative's tenth birthday an independent review was commissioned[128]. Garnet and Kwok (2009)[129] found members to be very positive about the initiative but that the rate of progress could be accelerated. Particular attention was drawn to members' ownership of the initiatives representing a unique and positive characteristic in comparison to other initiatives and conventions. This characteristic was deemed to enable the free and informal exchange of experiences and the arrangement of mutual support. While the demand side of anti-corruption efforts is involved in the initiative, the review highlighted the absence of the private sector as an area for improvement.

125 http://www.oecd.org/document/23/0,3343,en_34982156_35315367_35030743_1_1_1_1,00.html
126 Ibid.
127 Ibid.
128 Ibid.
129 Garnet, H. & Kwok, T., 2009, 'Independent Review of the ADB/OECD Initiative Final Report',
    available at http://www.oecd.org/dataoecd/55/30/44084819.pdf.

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- Guidelines (n°1) - «The Programming, Design and Management of General Budget Support»
- Guidelines (n°2) - «EC Support to sector programmes: covering the three financing modalities: Sector budget support, Pool funding and EC procurement and EC project procedures» - 2007
- Guidelines (n°3) - «Making technical cooperation more effective» - 2009
- Guidelines (n°4) – «Guidelines on the Integration of Environment and Climate Change in Development Cooperation» - 2009

Reference documents
- Reference document (n°1) - «Institutional Assessment and Capacity Development – Why, what and how?» - 2005
- Reference document (n°2) - «Supporting decentralisation and local governance in third countries» - 2008
- Reference document (n°3) - «Strengthening project internal monitoring: How to enhance the role of EC task managers» - 2009
- Reference document (n°4) - «Analysing and Addressing Governance in Sector Operations» - 2009
- Reference document (n°5) - «Sector Approaches in Agriculture and Rural Development» - 2009
- Reference document (n°6) - «Toolkit for Capacity Development» – 2010
- Reference document (n°7) - «Water Sector Development and Governance: Complementarities and synergies between Sector-wide Approach and Integrated Water Resource Management» – 2009
- Reference document (n°8) - «Engaging and Supporting Parliaments Worldwide -Strategies and methodologies for EC action in support to parliaments» – 2010
- Reference document (n°9) - «Support for judicial reform in ACP Countries» – 2010
- Reference document (n°10) - «Trade and Private Sector Policy and Development – Support programmes financed by EU external assistance» – 2010
- Reference document (n°11) - «Emerging good practice on Codes of Conduct, Partnership Principles and Memorandums of Understanding in the Water Sector» – 2010
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- Concept paper (n°1) - «Public Sector Reform: An Introduction» – 2009
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