

ANTI-CORRUPTION AGENCIES

INTRODUCTION

This chapter presents an overview of the models states use to establish an anti-corruption agency. This chapter also outlines the Darfur Peace Agreement provisions related to anti-corruption agencies and provides sample language parties may wish to consider when drafting provisions creating an anti-corruption agency.

States respond to corruption in various ways based on their needs and the particular governmental framework. The term “anti-corruption agency” is broadly used to describe institutions established to reduce corruption within a state. Anti-corruption agencies are also known as Public Integrity Commissions.

The structures and powers of anti-corruption agencies and commissions vary greatly from state to state. Most states use models that incorporate one or more of five key functions: (1) investigatory powers; (2) education and public awareness; (3) corruption prevention; (4) prosecution; and (5) coordination of related activities among government entities.

The Darfur Peace Agreement (DPA) does not explicitly establish an anti-corruption agency. However, the DPA does provide for the establishment of the Fiscal and Financial Allocation and Monitoring Commission (FAMC).¹ The FAMC is responsible for coordinating shared revenue between Darfur and the Government of Sudan.² The FAMC is an independent and autonomous institution with transparent processes.³ In addition to the establishment of the FAMC, the DPA requires Darfur to report expenditures on a periodic basis and ensure transparency in financial transactions.⁴

¹ Darfur Peace Agreement, art. 18, May 5, 2006, *available at* http://www.unmis.org/english/2006Docs/DPA_ABUJA-5-05-06-withSignatures.pdf (last accessed Sept. 23, 2007).

² Darfur Peace Agreement, art. 18, para. 120.

³ Darfur Peace Agreement, art. 18, paras. 123, 126.

⁴ Darfur Peace Agreement, art. 18, para. 133.

CORE ELEMENTS

International Framework for Anti-Corruption Efforts

The non-governmental organization, Transparency International, defines corruption as the “misuse of entrusted power for private gain.”⁵ Corruption exists in industrialized and developing states alike, discrediting the belief that corruption is merely a stage of development.

In the last decade, many international organizations established anti-corruption instruments to fight and prevent corruption. These instruments include the UN Convention against Corruption,⁶ the Inter-American Convention against Corruption,⁷ the European Union Convention on the Fight against Corruption Involving Officials of the European Communities or Officials of Member States of the European Union,⁸ and the African Union Convention on Preventing and Combating Corruption,⁹ amongst others. Through various means and mechanisms, each of these instruments seeks to prevent, detect, and punish corruption in either the public or private sector or both. Member states of these conventions and institutions aim to work together to deter and punish corruption.

In some cases, anti-corruption strategies address specific industries or activities. The Extractive Industries Transparency Initiative (EITI) represents one such sectoral approach. EITI supports improved governance in resource-rich countries through the full publication and verification of company payments and

⁵ ANTI-CORRUPTION HANDBOOK, TRANSPARENCY INTERNATIONAL, ANTI-CORRUPTION HANDBOOK, *available at* http://www.transparency.org/policy_research/ach (last accessed Sept. 29, 2007).

⁶ United Nations Convention Against Corruption, Dec. 14, 2005, *available at* http://www.unodc.org/unodc/crime_signatures_corruption.html (last accessed Sept. 29, 2007).

⁷ Inter-American Convention against Corruption, Mar. 6, 1997, *available at* www.oas.org/juridico/English/Sigs/b-58.html (last accessed Sept. 29, 2007).

⁸ European Union Convention on the Fight against Corruption Involving Officials of the European Communities or Officials of Member States of the European Union, May 26, 1997, *available at* <http://europa.eu/scadplus/leg/en/lvb/l33027.htm> (last accessed Sept. 14, 2007).

⁹ African Union Convention on Preventing and Combating Corruption, July 11, 2003 *available at* www.africa-union.org/root/AU/Documents/Treaties/Text/Convention%20on%20Combating%20Corruption.pdf (last accessed Sept. 29, 2007).

government revenues from oil, gas, and mining. Some 20 countries either endorse or are now actively implementing EITI standards around the world.¹⁰

Similarly, the Middle East and North Africa Financial Action Task Force (MENAFATF) is a voluntary regional body that combats money laundering and the financing of terrorist activities through financial systems. The MENAFATF complements the Financial Action Task Force created at the G-7 summit in Paris in 1989.¹¹

These international instruments and sectoral approaches provide helpful frameworks for states' anti-corruption strategies. Controlling corruption, however, involves establishing comprehensive national solutions that involve all the affected parties in the particular state. A systematic assessment of the local socio-political and cultural context, and the particular needs and priorities of the state may be necessary when establishing an anti-corruption agency.¹²

A number of international organizations contribute to anti-corruption efforts worldwide. Transparency International provides assistance to states involved in the design and application of national anti-corruption reform measures.¹³ Transparency International also supports the establishment of country-specific offices to facilitate state-based solutions to corruption problems.¹⁴ In its efforts to

¹⁰ EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE, ABOUT EITI, *available at* <http://www.eitransparency.org/section/abouteiti> (last accessed Sept. 23, 2007).

¹¹ The following states are members of the Middle East and North Africa Financial Action Task Force (MENAFATF): Algeria, Bahrain, Egypt, Jordan, Kuwait, Lebanon, Morocco, Oman, Qatar, Saudi Arabia, Syria, Tunisia, United Arab Emirates, and Yemen. THE MIDDLE EAST AND NORTH AFRICA FINANCIAL ACTION TASK FORCE, *available at* <http://www.menafatf.org/topiclist.asp?ctype=about&id=430> (last accessed Sept. 23, 2007); THE FINANCIAL ACTION TASK FORCE, *available at* <http://www.fatf-gafi.org> (last accessed Sept. 23, 2007).

¹² UNITED NATIONS DEVELOPMENT PROGRAMME, REGIONAL CENTRE IN BANGKOK, INSTITUTIONAL ARRANGEMENTS TO COMBAT CORRUPTION: A COMPARATIVE STUDY, 2005, *available at* http://www.u4.no/document/literature/Corruption_Comparative_Study-200512.pdf (last accessed Sept. 29, 2007).

¹³ TRANSPARENCY INTERNATIONAL, ANTI-CORRUPTION HANDBOOK, *available at* http://www.transparency.org/policy_research/ach (last accessed Sept. 29, 2007).

¹⁴ Civil society in a number of states in the Middle East and North Africa has established local Transparency International branches. Unfortunately, many believe these efforts have not been effective because of the unwillingness of governments to allow civil society to hold public officials accountable. UNITED NATIONS DEVELOPMENT PROGRAMME-PROGRAM ON

aid state development of anti-corruption mechanisms, the World Bank encourages the use of diagnostic tools for assessing government performance.¹⁵

These organizations, among others, propose that corruption is not a necessary stage of development but rather a phenomenon that occurs in both developing and industrialized states alike.¹⁶ Based on the research and study of these organizations, effective anti-corruption measures involve high levels of transparency and accountability and a strong political will at all levels of government and in a society as a whole.¹⁷

Independence of an Anti-Corruption Agency

The independence of an anti-corruption agency is fundamental to its success. Independence from the government can allow the agency to resist the influence of individuals or groups with specific agendas (political or otherwise) that may be in conflict with the interests of government transparency and accountability. Some states have constitutional provisions that guarantee an anti-corruption agency's independence. Others implement institutional safeguards to counter the possibility of undue influence and the potential for imbalances of power (such as the appointment of agency members by more than one branch of government). Others design oversight mechanisms to ensure the unbiased functioning of corruption agencies. These functions include specific reporting requirements as well as monitoring by multiple parties.

Hong Kong is one instance illustrating the independence of an anti-corruption agency. Institutional safeguards and a legal mandate guarantee the independence of Hong Kong's Independent Commission against Corruption (ICAC).¹⁸ Legislation and the Hong Kong Constitution guarantee this

GOVERNANCE IN THE ARAB REGION, FIGHTING CORRUPTION, *available at* <http://www.pogar.org/governance/anticorruption.asp> (last accessed Sept. 29, 2007).

¹⁵ WORLD BANK, ANTI-CORRUPTION: ASSESSING GOVERNMENT PERFORMANCE, *available at* <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTPUBLICSECTORANDGOVERNANCE/EXTANTICORRUPTION/0,,contentMDK:20221956~menuPK:1165672~pagePK:148956~piPK:216618~theSitePK:384455,00.html> (last accessed Sept. 29, 2007).

¹⁶ TRANSPARENCY INTERNATIONAL, ANTI-CORRUPTION HANDBOOK.

¹⁷ TRANSPARENCY INTERNATIONAL, ANTI-CORRUPTION HANDBOOK.

¹⁸ HONG KONG INDEPENDENT COMMISSION AGAINST CORRUPTION, ORDINANCE, *available at* <http://www.icac.org.hk/eng/power/index.html> (last accessed Sept. 29, 2007).

independence.¹⁹ In addition, while the Commission reports directly to Hong Kong's Chief Executive, four independent committees monitor the activities of the ICAC. These committees include representatives from civil society and an independent ICAC Complaints Committee, which reviews all complaints against the Commission itself.²⁰

Australia/New South Wales,²¹ Latvia,²² and South Korea also use institutional mechanisms to ensure the independence of their states' anti-corruption agencies. In Australia/New South Wales, a multi-party Parliamentary Joint Committees monitors and oversees the activities of the Independent Commission against Corruption and guarantees that the commission does not abuse its autonomy.²³ In Latvia and South Korea, different branches of government share the selection and appointment of anti-corruption agency staff. In Latvia, the Parliament appoints the head of the anti-corruption agency after a recommendation by the Executive Cabinet.²⁴ The President of South Korea appoints the Chairman and standing members of the agency, and Parliament and the Chief Justice recommend three members each.²⁵

¹⁹ The Basic Law of the Hong Kong CONST. art. 57 Special Administrative Region (Hong Kong, 1997), *available at* http://www.info.gov.hk/basic_law/fulltext/index.htm (last accessed Oct. 2, 2007).

²⁰ UNDP, REGIONAL CENTRE IN BANGKOK, INSTITUTIONAL ARRANGEMENTS TO COMBAT CORRUPTION: A COMPARATIVE STUDY, 2005, *available at* http://regionalcentrebangkok.undp.or.th/practices/governance/documents/Corruption_Comparative_Study-200512.pdf (last accessed Sept. 23, 2007).

²¹ New South Wales is a province of Australia. Independent Commission Against Corruption Act (Australia, 1988), Act No. 35, *available at* <http://www.legislation.nsw.gov.au/maintop/scanact/inforce/NONE/0> (last accessed Sept. 23, 2007).

²² Law on Corruption Prevention and Combating Bureau (Latvia, 2002), *available at* http://www.knab.gov.lv/uploads/en_htm/EN_bureau.htm (last accessed Sept. 29, 2007).

²³ John R. Heilbrunn, WORLD BANK INSTITUTE, ANTI -CORRUPTION COMMISSIONS PANACEA OR REAL MEDICINE TO FIGHT CORRUPTION? *available at* <http://siteresources.worldbank.org/WBI/Resources/wbi37234Heilbrunn.pdf> (last accessed Sept. 23, 2007).

²⁴ UNDP, REGIONAL CENTRE IN BANGKOK, INSTITUTIONAL ARRANGEMENTS TO COMBAT CORRUPTION: A COMPARATIVE STUDY, 2005.

²⁵ TRANSPARENCY INTERNATIONAL, NATIONAL INTEGRITY SYSTEMS COUNTRY STUDY REPORT – KOREA, 2001, *available at* http://www.transparency.org/policy_research/nis/regional/asia_pacific (last accessed Sept. 23, 2007).

Like Hong Kong and Australia/New South Wales, other states also enhance their agencies' reach, as well as its independence from undue influence, by requiring the submission of regular reports to multiple government authorities. Indonesia's Commission for the Eradication of Corruption²⁶ must submit reports to the President, the National Assembly, and the State Auditor.²⁷ Lithuania's Special Investigative Service²⁸ submits annual reports to both the President and Parliament.²⁹

Investigation Authority

Anti-corruption agencies in most states primarily serve an investigative role. The investigatory powers of an anti-corruption agency vary by state from broad to limited in scope. For example, an agency's powers often include the examination of the assets of public officials or the processes for procurement by government bodies, and may extend into the private sector. This investigatory power may also need the approval of another government entity, and effective investigation can require safeguards to protect individuals reporting abuses. As a result, most of these agencies have a process for assessing whether or not to initiate an investigation.

Scope of Investigatory Powers

The scope of state investigatory powers varies greatly by state. Both Singapore and Hong Kong have anti-corruption agencies with broad powers. Singapore's Corrupt Practices Investigation Bureau (CPIB)³⁰ has broad discretionary powers and investigatory authority. The powers of the CPIB include the right to seize the assets of civil servants accused of corruption and the authority

²⁶ INDONESIAN COMMISSION FOR THE ERADICATION OF CORRUPTION, *available at* <http://www.kpk.go.id/modules/news/index.php?lang=indonesia> (last accessed Sept. 23, 2007).

²⁷ UNDP, REGIONAL CENTRE IN BANGKOK, INSTITUTIONAL ARRANGEMENTS TO COMBAT CORRUPTION: A COMPARATIVE STUDY, 2005.

²⁸ REPUBLIC OF LITHUANIA, SPECIAL INVESTIGATION SERVICE website, *available at* <http://www.stt.lt/?lang=en> (last accessed Sept. 29, 2007).

²⁹ TRANSPARENCY INTERNATIONAL, NATIONAL INTEGRITY SYSTEMS COUNTRY STUDY REPORT – LITHUANIA, 2001, *available at* http://www.transparency.org/policy_research/nis/regional/europe_central_asia (last accessed Sept. 23, 2007).

³⁰ SINGAPORE, CORRUPT PRACTICES INVESTIGATION BUREAU website, *available at* <http://www.cpiib.gov.sg/> (last accessed Sept. 29, 2007).

to establish the terms and conditions of punishment.³¹ Similar to Singapore, in Hong Kong the Independent Commission against Corruption (ICAC) is an agency with the broad authority to investigate and pursue corruption in both the public and private sectors.

In contrast, Lithuania's Special Investigative Service (SIS) authority is limited in scope. The SIS may only investigate potential corruption among state officials and civil servants, but, unlike the Hong Kong ICAC, it may not explore misconduct in the private sector.³²

Approval Prior to Investigation

Some states require agencies to obtain the approval of another government or judicial entity to exercise investigatory authority. Although Singapore's Corrupt Practices Investigation Bureau (CPIB) has broad authority to investigate allegations of corruption, before beginning an investigation the investigating officer must first seek prior written approval from the state Prosecutor.³³ In addition, the CPIB must seek the consent of the Prime Minister or the President to investigate high-level officials, such as Ministers.³⁴ Likewise, in Tanzania an investigation officer must first obtain the approval of the head of the respective anti-corruption agency before initiating an investigation.³⁵

In contrast to Singapore and Tanzania, Hong Kong's ICAC must investigate every report of alleged corruption that it receives and does not have to seek or obtain the approval of any other government office.³⁶ This gives Hong Kong's

³¹ John R. Heilbrunn, WORLD BANK INSTITUTE, ANTI-CORRUPTION COMMISSIONS PANACEA OR REAL MEDICINE TO FIGHT CORRUPTION?

³² TRANSPARENCY INTERNATIONAL, NATIONAL INTEGRITY SYSTEMS COUNTRY STUDY REPORT – LITHUANIA, 2001.

³³ UNDP, REGIONAL CENTRE IN BANGKOK, INSTITUTIONAL ARRANGEMENTS TO COMBAT CORRUPTION: A COMPARATIVE STUDY, 2005.

³⁴ Maria del Mar Landette, COMBATING CORRUPTION: WHAT THE ECUADORIAN ANTI-CORRUPTION AGENCY CAN LEARN FROM INTERNATIONAL GOOD PRACTICE, *available at* <http://www.ecuatorianistas.org/landette.pdf#search=%22Anti-corruption%20agency%20investigative%22> (last accessed Sept. 23, 2007).

³⁵ UNDP, REGIONAL CENTRE IN BANGKOK, INSTITUTIONAL ARRANGEMENTS TO COMBAT CORRUPTION: A COMPARATIVE STUDY, 2005.

³⁶ UNDP, REGIONAL CENTRE IN BANGKOK, INSTITUTIONAL ARRANGEMENTS TO COMBAT CORRUPTION: A COMPARATIVE STUDY, 2005.

Commission against Corruption greater independence than the agencies of Singapore and Tanzania.

Monitoring of Public Assets and Procurement

Most anti-corruption investigative units also monitor the asset declarations of public officials and/or oversee government procurement procedures. The purpose of obtaining public officials' asset declarations is to identify what wealth is not attributable to illegitimate income, gift, or loan. In many states, such as Lithuania, the anti-corruption agency works in conjunction with a governmental office charged with registering these asset declarations. Specifically, the Lithuanian Special Investigative Service works with the Chief Officials Ethics Commission to analyze the integrity of the disclosure of all income and assets declarations by public officials.³⁷

Some Arab states have implemented rigorous monitoring mechanisms to supervise public procurement procedures. In Jordan, the General Supplies Department of the Ministry of Finance regulates all public procurement by government departments in accordance with the Supply Act 32 of 1993.³⁸ Egypt's Law on Organizing Tenders and Bids, likewise, applies to all public tenders and procurement.³⁹ In 2003, Egypt's General Organization for the Governmental Services took charge of all the Public Procurement Tenders on behalf of five ministries, including those of Finance, Trade, and Industry.⁴⁰ According to Bahrain's Public Tenders Law, the Council for Tenders audits the allocation of all government contracts.⁴¹ Members of the Council and their relatives cannot bid for government contracts.⁴²

Mechanisms for Reporting Corruption

³⁷ Where resources are limited, states have only required disclosure of assets from specific public officials (for instance, only elected or appointed officials, high-level civil servants, or those employed in sectors prone to high levels of corruption). TRANSPARENCY INTERNATIONAL, NATIONAL INTEGRITY SYSTEMS COUNTRY STUDY REPORT – LITHUANIA, 2001.

³⁸ UNDP, FIGHTING CORRUPTION, JORDAN COUNTRY PROFILE, *available at* <http://www.pogar.org/countries/anticorruption.asp?cid=7> (last accessed Sept. 23, 2007).

³⁹ UNDP, FIGHTING CORRUPTION, EGYPT COUNTRY PROFILE, *available at* <http://www.pogar.org/countries/anticorruption.asp?cid=5> (last accessed Sept. 23, 2007).

⁴⁰ UNDP, FIGHTING CORRUPTION, EGYPT COUNTRY PROFILE.

⁴¹ UNDP, FIGHTING CORRUPTION, BAHRAIN COUNTRY PROFILE, *available at* <http://www.pogar.org/countries/anticorruption.asp?cid=2> (last accessed Sept. 29, 2007).

⁴² UNDP, FIGHTING CORRUPTION, BAHRAIN COUNTRY PROFILE.

Mechanisms to facilitate public access to the anti-corruption agency for sharing of information, and measures to guarantee ease of reporting help ensure that the anti-corruption agency can effectively investigate corruption. However, fear of reprisal can impede public involvement in anti-corruption efforts.

Many states have therefore instituted anonymous reporting practices. Moreover, many anti-corruption agencies have direct legislative mandates to protect witnesses and whistleblowers.⁴³ To ensure accessibility to its citizenry, the Hong Kong ICAC established regional district offices throughout the state.⁴⁴ Similarly, to enhance ease of reporting, South Korea has established a Corruption Report Center.⁴⁵

Education and Public Awareness Activities

Raising public awareness about corruption and anti-corruption efforts may enhance the success of an anti-corruption strategy. Many anti-corruption agencies use public awareness campaigns to increase citizens' understanding of the importance of reporting and denouncing corruption. These campaigns also serve as useful tools to monitor public perceptions about corruption.⁴⁶

Hong Kong's ICAC has implemented a vigorous public awareness campaign as part of its anti-corruption strategy. The ICAC uses press releases, public information announcements, interviews, documentaries, posters, informational leaflets, and cooperation with schools and universities to convey an anti-corruption message to the public.⁴⁷ Similarly, the Australia/New South Wales Independent Commission against Corruption regularly holds public meetings to expose

⁴³ The term "whistleblower" refers to an informant, most often an employee, who reports employer misconduct.

⁴⁴ UNDP, REGIONAL CENTRE BANGKOK, INSTITUTIONAL ARRANGEMENTS TO COMBAT CORRUPTION: A COMPARATIVE STUDY, 2005.

⁴⁵ UNDP, REGIONAL CENTRE BANGKOK, INSTITUTIONAL ARRANGEMENTS TO COMBAT CORRUPTION: A COMPARATIVE STUDY, 2005.

⁴⁶ Maria del Mar Landette, COMBATING CORRUPTION: WHAT THE ECUADORIAN ANTI-CORRUPTION AGENCY CAN LEARN FROM INTERNATIONAL GOOD PRACTICE.

⁴⁷ UNDP, REGIONAL CENTRE BANGKOK, INSTITUTIONAL ARRANGEMENTS TO COMBAT CORRUPTION: A COMPARATIVE STUDY, 2005.

corruption.⁴⁸ Botswana's Directorate on Corruption and Economic Crimes (DCEC) uses the media to promote public awareness and educational campaigns.⁴⁹

Prevention Activities

Many states' anti-corruption agencies are required to implement preventative measures as part of the respective state's anti-corruption strategy. Such measures include reviewing the practices and procedures of government departments to facilitate the discovery of corruption and to assist in the revision of work procedures that may lead to corruption.

The Hong Kong ICAC has an extensive mandate to prevent corruption. The ICAC provides guidance to government offices and institutions on ways in which they can eliminate corrupt practices. The ICAC also advises the heads of government departments of changes in practices or procedures that they can implement to reduce corrupt practices.⁵⁰

Botswana's DCEC is required to examine the practices and procedures of public agencies and advise public officials on the means to eliminate the potential for corrupt activities.⁵¹ The DCEC created a specialized body, the Corruption Prevention Group (CPG), to carry out these preventative objectives. The mission of the CPG is to identify areas in government that are particularly susceptible to corrupt transactions, such as purchasing and contract bidding. The CPG also advises government leadership on work practices that limit the potential for corruption.⁵²

Some states, such as Australia/New South Wales, have anti-corruption agencies that focus primarily on corruption prevention and only reserve limited

⁴⁸ UNDP, REGIONAL CENTRE BANGKOK, INSTITUTIONAL ARRANGEMENTS TO COMBAT CORRUPTION: A COMPARATIVE STUDY, 2005.

⁴⁹ TRANSPARENCY INTERNATIONAL, NATIONAL INTEGRITY SYSTEMS COUNTRY STUDY REPORT – BOTSWANA, 2001, *available at* http://www.transparency.org/policy_research/nis/regional/africa_middle_east (last accessed Sept. 29, 2007).

⁵⁰ UNDP, REGIONAL CENTRE BANGKOK, INSTITUTIONAL ARRANGEMENTS TO COMBAT CORRUPTION: A COMPARATIVE STUDY, 2005.

⁵¹ TRANSPARENCY INTERNATIONAL, NATIONAL INTEGRITY SYSTEMS COUNTRY STUDY REPORT – BOTSWANA, 2001.

⁵² Maria del Mar Landette, COMBATING CORRUPTION: WHAT THE ECUADORIAN ANTI-CORRUPTION AGENCY CAN LEARN FROM INTERNATIONAL GOOD PRACTICE.

resources for investigation. While the Australia/New South Wales Independent Commission against Corruption maintains an investigation unit, corruption prevention is the primary focus of the agency. The ICAC disseminates information to government offices and to the public about the costs of corruption.⁵³ Similarly, the mandate of the United States Office of Government Ethics (OGE)⁵⁴ is to deter conflicts of interest by disseminating information on laws and regulations that govern public sector employment.⁵⁵ Accordingly, the OGE defines corrupt practices and informs public servants about United States' laws to prevent corruption.⁵⁶ The OGE has no investigative capacity. Rather, the role of the OGE is entirely preventative and aimed at improving bureaucratic understanding of laws and regulations.

A limited number of states' anti-corruption agencies may also enhance prevention by proposing amendments to laws and regulations. For instance, the Corruption Prevention and Combating Bureau in Latvia and the SIS in Lithuania may review legislation and make proposals for review.⁵⁷ The SIS in Lithuania also has the power to propose legislation to the President and the Parliament.⁵⁸

Prosecution Authority

State practice shows that a limited number of anti-corruption agencies also assume responsibility for the prosecution of cases of corruption. The authority of an anti-corruption agency to prosecute cases of corruption can be important if a state does not have an adequate prosecution system. This is in part because, in such instances, the anti-corruption agency may be the only functioning body with sufficient independence to bring a case to court.⁵⁹

⁵³ John R. Heilbrunn, WORLD BANK INSTITUTE, ANTI -CORRUPTION COMMISSIONS PANACEA OR REAL MEDICINE TO FIGHT CORRUPTION?

⁵⁴ UNITED STATES OFFICE OF GOVERNMENT ETHICS, *available at* www.usoge.gov/ (last accessed Sept. 23, 2007).

⁵⁵ John R. Heilbrunn, WORLD BANK INSTITUTE, ANTI -CORRUPTION COMMISSIONS PANACEA OR REAL MEDICINE TO FIGHT CORRUPTION?

⁵⁶ John R. Heilbrunn, WORLD BANK INSTITUTE, ANTI -CORRUPTION COMMISSIONS PANACEA OR REAL MEDICINE TO FIGHT CORRUPTION?

⁵⁷ UNDP, REGIONAL CENTRE BANGKOK, INSTITUTIONAL ARRANGEMENTS TO COMBAT CORRUPTION: A COMPARATIVE STUDY, 2005.

⁵⁸ TRANSPARENCY INTERNATIONAL, NATIONAL INTEGRITY SYSTEMS COUNTRY STUDY REPORT – LITHUANIA, 2001.

⁵⁹ UNDP, REGIONAL CENTRE BANGKOK, INSTITUTIONAL ARRANGEMENTS TO COMBAT CORRUPTION: A COMPARATIVE STUDY, 2005.

Tanzania and Botswana are two states that endow their anti-corruption agencies with the power to prosecute cases of corruption. In Tanzania, the Prevention of Corruption Bureau (PCB)⁶⁰ may prosecute cases with the approval of the Director for Public Prosecution.⁶¹ Botswana's Constitution requires the Attorney General to oversee all criminal prosecutions. However, due to a heavy workload, the responsibility to prosecute cases of corruption has shifted to the DCEC.⁶²

In most states, prosecution of corruption cases remains the responsibility of the judiciary. For instance, Singapore's Corrupt Practices Investigation Bureau (CPIB) cannot prosecute a suspect on its own. It can only investigate and present evidence to the Singapore Attorney General. The Attorney General then decides whether to prosecute the case.⁶³ The Hong Kong ICAC cannot prosecute cases; instead, it presents evidence to the state's Secretary of Justice who then makes a decision regarding prosecution.⁶⁴ Similarly, the United States OGE submits any evidence of misconduct to the state's Department of Justice for further investigation and prosecution.⁶⁵

Coordination of Anti-Corruption Agency and Government Offices

In some states, particularly those with complex governmental structures, anti-corruption agencies are also involved in coordinating the national anti-corruption effort. Government entities sometimes have overlapping mandates related to anti-corruption efforts. This redundancy can ensure the pursuit of every case irrespective of political biases. Such overlapping mandates can be problematic, however, if they cause an ineffective use of resources or conflicts between different entities.

⁶⁰ TANZANIA PREVENTION OF CORRUPTION BUREAU, *available at* <http://www.tanzania.go.tz/pcb/> (last accessed Sept. 23, 2007).

⁶¹ UNDP, REGIONAL CENTRE BANGKOK, INSTITUTIONAL ARRANGEMENTS TO COMBAT CORRUPTION: A COMPARATIVE STUDY, 2005.

⁶² UNDP, REGIONAL CENTRE BANGKOK, INSTITUTIONAL ARRANGEMENTS TO COMBAT CORRUPTION: A COMPARATIVE STUDY, 2005.

⁶³ Maria del Mar Landette, COMBATING CORRUPTION: WHAT THE ECUADORIAN ANTI-CORRUPTION AGENCY CAN LEARN FROM INTERNATIONAL GOOD PRACTICE.

⁶⁴ Maria del Mar Landette, COMBATING CORRUPTION: WHAT THE ECUADORIAN ANTI-CORRUPTION AGENCY CAN LEARN FROM INTERNATIONAL GOOD PRACTICE.

⁶⁵ John R. Heilbrunn, WORLD BANK INSTITUTE, ANTI -CORRUPTION COMMISSIONS PANACEA OR REAL MEDICINE TO FIGHT CORRUPTION?

In the United States, a number of distinct government offices work together to form a network of agencies to combat corruption. The Office of Government Ethics (OGE) coordinates the cooperation among offices. Latvia's Corruption Prevention and Combating Bureau (CPCB) also has a mandate to coordinate the implementation of anti-corruption efforts amongst government institutions.⁶⁶ All other bodies with investigative mandates are required to assist the CPCB in carrying out its investigations.⁶⁷

DARFUR PEACE AGREEMENT

The Darfur Peace Agreement (DPA) provisions related to the competencies of the Fiscal and Financial Allocation and Monitoring Commission (FAMC) are the most closely related to anti-corruption. The FAMC's primary responsibility is to formulate the amount of revenue shared between the Government of Sudan and Darfur.⁶⁸

In the DPA, the parties agree to the independence and autonomy of the FAMC.⁶⁹ To ensure its independence, removal of the head of the FAMC requires due cause.⁷⁰ Further, decisions require consensus,⁷¹ and there must be "appropriate representation" for Darfur in the Commission.⁷²

To facilitate the FAMC's duties, the president must appoint, and the National Legislature approves, an independent Panel of Experts.⁷³ The Panel will propose formulae for vertical allocation of resources between the Government of

⁶⁶ UNDP, REGIONAL CENTRE BANGKOK, INSTITUTIONAL ARRANGEMENTS TO COMBAT CORRUPTION: A COMPARATIVE STUDY, 2005.

⁶⁷ UNDP, REGIONAL CENTRE BANGKOK, INSTITUTIONAL ARRANGEMENTS TO COMBAT CORRUPTION: A COMPARATIVE STUDY, 2005.

⁶⁸ Darfur Peace Agreement, art. 18, para. 120, May 5, 2006, *available at* http://www.unmis.org/english/2006Docs/DPA_ABUJA-5-05-06-withSignatures.pdf (last accessed Sept. 23, 2007).

⁶⁹ Darfur Peace Agreement, art. 18, para. 123.

⁷⁰ Darfur Peace Agreement, art. 18, para. 123.

⁷¹ Darfur Peace Agreement, art. 18, para. 123.

⁷² Darfur Peace Agreement, art. 18, paras. 120, 129(c). The Commission head is appointed for a specific term. Darfur Peace Agreement, art. 18, para. 120, para. 129(c).

⁷³ Darfur Peace Agreement, art. 18, para. 121. The President must choose from a group recommended by the Commission. The Panel will include "highly qualified economists" and other experts from the academic, government and also the private sector.

Sudan and Darfur.⁷⁴ Additionally, the Panel will also propose “criteria for horizontal allocation between states.”⁷⁵ The Panel must submit a report within six months of its appointment to the president through the FAMC.⁷⁶ Within a month of receiving the report, the president must submit the report to the National Legislature for approval.⁷⁷ After approval, the FAMC implements the report’s proposals.⁷⁸

To ensure the predictability in the transfer of funds to Darfur, the FAMC must institute a transparent, formula-based process.⁷⁹ Moreover, the National government may not refuse the transfer of funds to Darfur.⁸⁰

The DPA also requires Darfur to submit to accountability mechanisms. Periodically,⁸¹ Darfur must report its amount of expenditures and revenues.⁸² A budget, drafted according to transparent national government standards, reports all expenditures and revenues.⁸³

SAMPLE LANGUAGE

Article XXX

Establishment of an Anti-Corruption Agency

The Parties hereby establish an independent anti-corruption agency. The agency shall consist of an agency head, a deputy agency head and other officers as may be appointed [by the Executive] [or] [by the Executive and confirmed by the National Legislature] [or] [nominated by the Legislature

⁷⁴ Darfur Peace Agreement, art. 18, para. 121.

⁷⁵ Darfur Peace Agreement, art. 18, para. 121.

⁷⁶ Darfur Peace Agreement, art. 18, para. 122.

⁷⁷ Darfur Peace Agreement, art. 18, para. 122.

⁷⁸ Darfur Peace Agreement, art. 18, para. 122.

⁷⁹ Darfur Peace Agreement, art. 18, para. 126.

⁸⁰ Darfur Peace Agreement, art. 18, para. 126.

⁸¹ Darfur Peace Agreement, art. 18, para. 133. Darfur must report expenditures and revenues on a quarterly, semi-annual, and annual basis.

⁸² Darfur Peace Agreement, art. 18, para. 133. Revenues are those funds raised from taxes, non-tax fees and charges.

⁸³ Darfur Peace Agreement, art. 18, para. 126.

and appointed by the Executive] [or/and] [allow a certain number of agency members to be appointed by the other branches of government].⁸⁴

Article XXX

Independence of the Agency

The agency shall be independent and autonomous.⁸⁵

AND/OR

The agency shall forward the [Executive or the Legislature or both], for approval, estimates of the expenditures of the agency for the next financial year.⁸⁶

AND/OR

The agency is required annually to report to the relevant committees [in the National Legislature, the Executive, or both].⁸⁷

Article XXX

Independence of the Agency's Officers

The agency's officers shall be responsible [only to the Executive or the National Legislature, or both].⁸⁸

⁸⁴ This language is drawn from the selection and appointment processes used in Latvia, South Korea and Hong Kong. In Latvia, the Parliament appoints the agency head after a recommendation by the Executive Cabinet. In South Korea, the President appoints the chairman and standing members of the agency, while Parliament and the Chief Justice recommend three members each. In Hong Kong, the Executive appoints the agency's head, however the agency answers to both the Executive and four independent committees.

⁸⁵ This language is drawn from the Basic Law of the Hong Kong Special Administrative Region (Hong Kong, 1997), art. 57.

⁸⁶ This language is drawn from the language of Hong Kong's Independent Commission Against Corruption Ordinance, ch. 204, sec. 14.

⁸⁷ This language is drawn from the practices of Indonesia's Commission for the Eradication of Corruption and Lithuania's Special Investigative Service.

⁸⁸ This language is drawn from Hong Kong's Independent Commission Against Corruption Ordinance and the Australia/New South Wales approaches to the monitoring of anti-corruption agencies.

AND/OR

Agency officers shall not discharge the duties of another office.⁸⁹

AND/OR

Agency officers may only be removed for [good cause or on the finding of misconduct, incapacity, or incompetence by either the National Legislature or the Executive].⁹⁰

Article XXX

Investigatory Powers

The anti-corruption agency shall commence an investigation pursuant to [a determination by the agency, or an Executive or Legislative determination (or a determination by both branches), or allow all three to commence investigations].⁹¹

AND/OR

The anti-corruption agency shall investigate complaints or reports of alleged corruption made to the agency.⁹²

Article XXX

Education and Public Awareness

⁸⁹ This language is drawn from Hong Kong's Independent Commission Against Corruption Ordinance, ch. 204, sec. 5.

⁹⁰ This language is drawn from article 18, para. 123 of the Darfur Peace Agreement. The language is also drawn from the SOUTH AFRICAN CONST. ch. 9, sec. 194 (1996) *available at* <http://www.info.gov.za/documents/constitution/1996/96cons9.htm#194> (last accessed Sept. 24, 2007), which requires a National Assembly committee to find that the individual has acted wrongfully, is incapacitated, or incompetent. The committee's finding is then adopted by the National Assembly in a resolution calling for that person's removal. The President can suspend the person while a committee investigation is on going, but can only remove the person after the National Assembly adoptions a resolution.

⁹¹ This language is drawn from the investigatory procedures of Singapore's Corrupt Practices Investigation Bureau and Hong Kong's Independent Commission Against Corruption.

⁹² This language is drawn from investigatory procedures of Hong Kong's Independent Commission Against Corruption.

The agency shall provide general information to the public regarding ways they can report and prevent corrupt activities to the authorities.⁹³

Article XXX **Prevention**

- (1) In an effort to prevent corruption, the agency shall:
 - (a) Propose changes to the National Legislature and the Executive regarding pending and enacted legislation that risks being used for corrupt purposes.
 - (b) Review practices and procedures of government departments, ministries, and agencies.⁹⁴

Article XXX **Prosecution**

Where the standard to bring a court action is met, the agency shall [recommend the judiciary bring a court action against, or bring a court action against, or shall prosecute] persons involved in a corruption investigation.⁹⁵

Article XXX **Coordination of Related Activities among Government Entities**

The agency shall coordinate anti-corruption efforts between the different government entities.⁹⁶

⁹³ This language is drawn from education methods utilized by Australia/New South Wales, Hong Kong's Independent Commission Against Corruption and Botswana's Directorate on Corruption and Economic Crimes.

⁹⁴ This language is drawn from prevention methods followed by Hong Kong's Independent Commission Against Corruption, Australia/New South Wales' Independent Commission Against Corruption, Latvia's Corruption Prevention and Combating Bureau, and Lithuania's Special Investigative Unit.

⁹⁵ This language is drawn from prosecutorial procedures followed by Singapore's Corrupt Practices Investigation Bureau, Tanzania's Prevention of Corruption Bureau, Botswana's Directorate on Corruption and Economic Crimes and the United States' Office of Government Ethics.

⁹⁶ This language is drawn from coordinated efforts followed by the United States' Office of Government Ethics and Latvia's Corruption Prevention and Combating Bureau.