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INTERNATIONAL

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Comparative research

**Public councils or similar bodies
for cooperation with society
of Anti-corruption institutions**

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BACKGROUND

In 2006, in accordance with the new Anti-corruption Law of Mongolia, an independent Anti-Corruption Agency (ACA) was established. Since its inception, the ACA has worked towards ending widespread corruption by identifying and addressing underlying issues that can lead to an environment in which corruption can thrive.

Chapter 27 of the Anti-corruption law obliges an establishment of the Public Council (PC). PC is a part of the ACA and its purpose is to promote the public participation in curbing corruption and issue recommendations and suggestions on the corruption situation and implementation of the Anti-corruption law.

This is a comparative research on public councils or similar bodies of anti-corruption institutions in other countries, that is drafted within the project "Empowering Public Council to Curb Government Corruption" led by Globe International, a Mongolian non-governmental organization (NGO). The project matches the problems that PC power is very limited by law and Working Rules, nomination and appointing processes of PC are not open and transparent, PC activities are not permanent, NGOs and other civil society organizations are not well aware of PC goals and activities, there is no close cooperation and the entire public is not informed on existence of PC. In order to assist in empowering PC that is able to take remarkable contributions to the ACA duties to curb corruption, this comparative research aims at finding and suggesting best practices existing of organization of public councils and their powers.

INTRODUCTION

It is regarded to be impossible to identify "best models" or blueprints for establishing anti-corruption institutions. Any new institution needs to be adjusted to the specific national context. It is a proven fact that institutional transplants from foreign systems are likely to fail if they are not adequately adapted to the local political, cultural, social, historical, economic, constitutional and legal background. Accordingly, the first rule is to adapt the model and form of specialized anti-corruption preventive and repressive functions to the local context¹. However, overlooking world's scene of established anti-corruption institutions some trends can be established and main models identified.² This refers also to anti-corruption institution's cooperation with society. The previous researches revealed that very few of the agencies have a conscious strategy for interacting with the public and even fewer have polled the public in relation to their views of the organization and its work. Any new agency would need to build in public interaction links from the start.³ There are though some models of cooperation that could be followed, but national context and specifics of national anti-corruption institution's model has to be taken into account.

Responding to the challenge of fighting corruption, various anti-corruption bodies, agencies, commissions and committees have mushroomed throughout the last decades, especially in transition and developing countries. Considering the multitude of anti-corruption institutions worldwide, their various functions and in particular the arguments about their actual performance, it is difficult to identify all main patterns and models. However, some trends can be established based on different purposes of anti-corruption institutions (viewed through their functions). According to the functions there are three main types/models of institutions:

- **Multi-purpose agencies with law enforcement powers and preventive functions**

This model represents the most prominent example of a single-agency approach based on key pillars of repression and prevention of corruption: policy, analysis and technical assistance in prevention, public outreach and information, monitoring, investigation. The model is commonly identified with the Hong Kong Independent Commission against Corruption and Singapore Corrupt Practices Investigation Bureau.

- **Law enforcement type institutions**

Law enforcement agencies, departments and/or units. The law enforcement model takes different forms of specialization, and can be implemented in detection and investigation bodies or in prosecution bodies. This model can also combine specialized anti-

1 The country must first take stock of where it is, decide on where it wants to go, and finally elaborate a detailed roadmap.

2 Specialised anti-corruption institutions. Review of models. OECD, 2007.

3 Prerequisites for effective anti-corruption ombudsman's offices and anti-corruption agencies; Lala Camerer, <http://www.10iacc.org/content-ns.phtml?documents=103&art=178>

corruption detection, investigation and prosecution in one body. This is perhaps the most common model applied in Western Europe.

Preventive, policy development and co-ordination institutions

This model includes institutions that have one or several corruption prevention functions, such as research and analysis, policy development and co-ordination, training and advising various bodies on risk of corruption and available solutions, and other functions. These bodies normally do not have law enforcement powers.⁴

The Singapore's and Hong Kong commissions (created in the 1950s and 1970s) is the example that gave rise to the popular image of the successful, independent multi-purpose anti-corruption agency. Similar agencies have been created on all continents, for example, Special Investigation Service (Lithuania), Corruption Prevention and Combating Bureau (Latvia), Independent Commission against Corruption (New South Wales, Australia), Inspector General of Government (Uganda), Directorate on Corruption and Economic Crime (Botswana). Agencies in Korea, Thailand, Argentina and Ecuador have adopted some elements of the Hong Kong and Singapore strategies, but follow them less rigorously.⁵

As the Anti-Corruption Agency (ACA) of Mongolia according to its main functions can be regarded as multi-purpose agency with law enforcement powers and preventive functions, main focus of the report will be on similar bodies and their cooperation with society.

In the comparative research cooperation with society of such multi-purpose agencies will be examined: Hong Kong Special Administrative Region: Independent Commission against Corruption (HK ICAC); New South Wales, Australia's Independent Commission against Corruption (NSW ICAC); Singapore: Corrupt Practices Investigation Bureau (CPIB); Lithuania: Special Investigation Service (STT); Latvia: Corruption Prevention and Combating Bureau (KNAB); Korea: The Korea Independent Commission Against Corruption (KICAC), now integrated into: the Anti-Corruption and Civil Rights Commission (ACRC); Poland: Central Anticorruption Bureau (CBA); Tanzania: The Prevention and Combating of Corruption Bureau (PCCB), before the Prevention of Corruption Bureau (PCB).

In addition also some examples from other anti-corruption bodies will be reviewed: Romania: National Anticorruption Directorate (NAD) and Anti-Corruption General Directorate (AGD); Austria: The Bureau for Internal Affairs (BIA); France: Brigade Centrale de Lutte contre la Corruption (Central Anti-Bribery Brigade) (BCLC) and Central Service for Prevention of Corruption (SCPC); Albania: The Governmental Commission for the Fight against Corruption (GCFAC) and The Anti-Corruption Monitoring Group (ACMG); Slovenia: Commission for the

4 Specialised anti-corruption institutions. Review of models. OECD, 2007.

5 Specialised anti-corruption institutions. Review of models. OECD, 2007.

Prevention of Corruption (CPC).

Aims for cooperation with society

Effective cooperation with society is crucial point for the success of anti-corruption agency. This, among other, **ensures independence of anti-corruption agency; builds public support and trust; ensures credibility and transparency of anti-corruption agency's work; ensures accountability of anti-corruption agency towards society; provides information and feedback to anti-corruption agency; works as think tank - resource center.**

Expert on specialized anti-corruption agencies points out that there are at least 10 prerequisites to ensure independence of anti-corruption agencies. And one of the prerequisites is cooperation and consultations with civil society.⁶ Public confidence sin is one of the Seven Deadly Sins of anti-corruption agencies or seven things to be aware of in order not to fail. In the first place, the public should be aware of the existence, mandate, functions and performance of an anti-corruption institution. Well-established civil society organizations, free media and a relatively high level of public confidence in the institution as well as the institution's openness to and co-operation with the civil society, are considered important barriers against improper political attacks.⁷

Practice in many countries attests that the support of the public, which in turn is conditioned by the integrity of the anti-corruption institution, is crucial in times when the body comes under politically-motivated attacks.⁸

Anti-corruption agencies require substantial and effective links with civil society, not only to build up public support for their independence, but also to utilize citizen reports as a major part of their strategy. If little has been done to involve the community in the work of the agency, the inevitable result is that the public comes to distrust the agency and provides no information about what is going on. Without that information the agency's investigative powers are useless. Furthermore, its preventive and educational work⁹ is likely to be ignored. Even comprehensive institutional efforts against corruption are prone to fail without the active involvement of the civil society and the private sector. Accordingly, one of the important features of specialized bodies promoted by different international instruments is co-operation with civil society. This standard applies not only to the preventive and education bodies, but also to the law enforcement bodies.

6 De Speville Bertrand, Utstein Anti-corruption Resource Center, Transparency International

7 Doig Alan, "A Good Idea Gone Wrong? Anti-Corruption Commissions in the Twenty First Century", EGPA 2004 Annual Conference

8 Specialised anti-corruption institutions. Review of models. OECD, 2007.

9 One of the functions for multi-purpose anti-corruption bodies is education and awareness raising, this among other, includes working with the media, NGOs, businesses and the public at large.

Accountability of anti-corruption institutions is essential for ensuring their credibility and transparency and for building the public's trust. Practice shows that the main elements of accountability include regular reports presented to the Parliament, President's Office and Government and available to the public as well as public forums such as consultative councils.¹⁰ Civil society can be part of accounting mechanism, thus ensuring credibility of the work anti-corruption institution is doing. The involvement of civil society among other should also ensure that there will be no abuse of power from the side of anti-corruption institution. Oversight of civil society can protect against corruption inside the institution.¹¹

Regular consultations and feedback from civil society are important tools for anti-corruption agencies in order to be able to adjust or go further with anti-corruption strategies and initiatives.

10 Common standards and best practice for anti-corruption agencies, EPAC Anti-corruption working group report. May, 2008.

11 See also: Pope J. and Vogl F. Making Anticorruption Agencies More Effective.

MODELS OF COOPERATION WITH SOCIETY

Cooperation with civil society is organized in various ways. An example of a good practice in a single multi-purpose agency is to have special external oversight committees, which can include representatives of different state and civil society bodies.¹² Also NGO advisory committees along the lines followed in Hong Kong could play a constructive role if carefully structured, focused and appointed.

1.

Hong Kong Special Administrative Region: Independent Commission against Corruption (HK ICAC)

Since its inception in 1974, the HK ICAC¹³ has embraced a three-pronged approach of law enforcement, prevention and community education to fight corruption. With the support of the Government and the community, Hong Kong has now become one of the cleanest places in the world.

Accountability and cooperation with society

The HK ICAC sets the standard here. Few, if any, law enforcement agencies both locally and overseas are being subject to such a stringent monitoring system. Accountability begins with strict responsibility of HK ICAC and senior officers to the Chief Executive (formerly the Governor), and of the agency to the legislature, which reviews HK ICAC's annual reports and approves the agency budget as part of the general revenue.

The most famous of HK ICAC's accountability mechanisms are the citizen oversight boards, known as **Advisory Committees**. The committee system has been in place since the HK ICAC was set up. For the Government realized then that the fight against corruption could not have succeeded without solid public support. Through these committees, leading members of the community represent the public in monitoring the HK ICAC's work. These are appointed to review all of HK ICAC's policies and functions, and must be chaired by private citizens. The committees respectively offer advice and improvement proposals on the overall policies of HK ICAC as well as the work of its three functional departments.

The work of the HK ICAC comes under the scrutiny of **four independent advisory committees**, comprising of prominent citizens (community leaders or responsible citizens, e.g. business sector, academic institutions, legal professions) and appointed by the Chief Executive of the Hong Kong Special Administrative Region Government. Committees have also some ex-officio members that are representatives of public institutions, but all four advisory committees must be chaired by civilian members:

- **Advisory Committee on Corruption;**
- **Operations Review Committee;**

¹² Specialised anti-corruption institutions. Review of models. OECD, 2007.

¹³ <http://www.icac.org.hk/en/home/index.html>

- **Corruption Prevention Advisory Committee;**
- **Citizens Advisory Committee on Community Relations.**¹⁴

1. Advisory Committee on Corruption

The Committee oversees the general work direction of the HK ICAC and advises on policy matters. Secretariat is Administration Branch of HK ICAC.

Terms of Reference

- To advise the Commissioner of the Independent Commission Against Corruption on any aspect of the corruption problems in Hong Kong, and to:
 - Keep the operational, staffing and administrative policies of the Commission under review.
 - Advise on action being considered by the Commissioner under section 8(2) of the Independent Commission Against Corruption Ordinance.
 - Receive reports by the Commissioner on disciplinary action taken.
 - Consider the annual estimates of expenditure of the Commission.
 - Scrutinize the annual report of the Commission before its submission to the Chief Executive.
 - Submit an annual report to the Chief Executive on the work of the Committee.
 - To draw to the Chief Executive's attention, as it considers necessary, any aspect of the work of the Commission or any problem encountered by it.

Membership (as at 1 Jan 2009): The Hon Mrs Laura M Cha, SBS, JP (Chairman); Mr Edward CHENG Wai-sun, SBS, JP; Prof the Hon Lawrence LAU Juen-yee, JP; The Hon CHAN Kam-lam, SBS, JP; The Hon Jeffrey LAM Kin-fung, SBS, JP; Ms Shelley Lee Lai-kuen, GBS, JP; Mr Rimsky Yuen Kwok-keung, SC

and ex officio members:

- Dr Moses CHENG Mo-chi, GBS, JP
Chairman of Citizens Advisory Committee on Community Relations
- Mr Philip CHEN Nan-lok, SBS, JP
Chairman of Corruption Prevention Advisory Committee
- Mr Michael Sze Cho-cheung, GBS, JP
Chairman of Operations Review Committee
- Director of Administration or her representative
- Commissioner, Independent Commission Against Corruption
- Head of Operations, Independent Commission Against Corruption

2. Operations Review Committee

The Committee oversees all the HK ICAC investigations. Secretariat is Operations Department of HK ICAC.

The Operations Review Committee (ORC) is arguably the most strategic, since it oversees the largest and most powerful department. The Committee does not have formal powers to compel the production of

¹⁴ Specialised anti-corruption institutions. Review of models. OECD, 2007.

documents and information, but does have a straight line of responsibility to the Commissioner and the Executive. HK ICAC cannot terminate any investigations without the approval of the ORC - the The Committee scrutinizes every case recommended for "no further action". It is often not uncommon for Committee members to hold a different view on cases and demand investigations to continue. On cases that are of great public interest, the ORC will examine in detail the investigation work and procedures for collecting evidence. The ORC can also direct their views to the Chief Executive when it thinks fit to do so.

The ORC meets every six weeks. It examines on-going investigation reports which are of public interest, cases proposed for termination and complaints of which legal proceedings have started.

Terms of Reference

- Receive from the Commissioner information about all complaints of corruption made to the Commission and the manner in which the Commission is dealing with them.
- Receive from the Commissioner progress reports on all investigations lasting more than a year or requiring substantial resources.
- Receive from the Commissioner reports on the number of, and justifications for, search warrants authorized by the Commissioner, and explanations as to the need for urgency, as soon afterwards as practical.
- Receive from the Commissioner reports on all cases where suspects have been bailed by HK ICAC for more than six months.
- Receive from the Commissioner reports on the investigations the Commission has completed and to advise on how those cases that on legal advice are not being subject to prosecution or caution, should be pursued.
- Receive from the Commissioner reports on the results of prosecutions of offences within the Commission's jurisdiction and of any subsequent appeals.
- Advise the Commissioner on what information revealed by investigations into offences within its jurisdiction shall be passed to government departments or public bodies, or other organization and individuals, or, where in exceptional cases, it has been necessary to pass such information in advance of a Committee meeting, to review such action at the first meeting thereafter.
- Advise on such other matters as the Commissioner may refer to the Committee or on which the Committee may wish to advise.
- Draw to the Chief Executive's attention any aspect of the work of the Operations Department or any problems encountered by the Committee.
- Submit annual reports to the Chief Executive which should be published.

Membership (as at 1 Jan 2009): Mr Michael SZE Cho-cheung, GBS, JP(Chairman); Dr the Hon Marvin CHEUNG Kin-tung, GBS, JP; Professor John LEONG Chi-yan, JP; The Hon Vincent FANG Kang, SBS, JP; Mr KAM Pok-man; Mr Roger LUK Koon-hoo, BBS, JP; Mr SIN Chung-kai, SBS, JP; Ms Winnie TAM Wan-chi, SC; Prof Stephen CHEUNG Yan-leung, JP; Mr Joseph Paul FOK, SC, JP; Mr Andrew BRANDLER; Mr Alasdair G MORRISON; Mr Nicholas Peter SNAITH

and ex officio members:

- Secretary for Justice or his representative
- Commissioner of Police or his representative

- Director of Administration or her representative
- Commissioner, Independent Commission Against Corruption

3. Corruption Prevention Advisory Committee

The Committee advises on the priority of corruption prevention studies and examines all study reports. Secretariat is Corruption Prevention Department of HK ICAC.

Terms of Reference
<ul style="list-style-type: none"> • Receive and call for reports from the Commission about practices and procedures of Government Departments, public bodies and the private sector which may be conducive to corruption and to advise the Commissioner what areas should be examined and the degree of priority to be accorded to each. • Consider recommendations arising from such examinations and to advise the Commissioner on further action to be taken. • Monitor action taken to implement recommendations made on the advice of the Corruption Prevention Advisory Committee.

Membership (as at 1 Jan 2009): Mr CHEN Nan-lok, Philip, SBS, JP (Chairman); Mr AU Siu-cheung, Albert; Mr CHEUNG Tat-tong; Mr CHEW Fook-aun; Dr CHAN WONG Lai-kuen, Anissa, MH, JP; Dr FAN Yun-sun, Susan; Dr FUNG Yuk-lun, Allen; Mr HO Chiu-fai Dominic; Ms HO Siu-fong, Betty; Mr LI Lu-jen, Laurence; Mr PANG Yiu-kai, SBS, JP; Ms WONG Pik-kuen, Helen and ex officio members:

- Commissioner of Police or his representative
- Director of Administration or her representative
- Commissioner, Independent Commission Against Corruption

4. Citizens Advisory Committee on Community Relations

The Committee advises on the strategies of public education and enlisting public support against corruption. Secretariat is Community Relations Department of HK ICAC.

Terms of Reference
<ul style="list-style-type: none"> • Advise the Commissioner of the Independent Commission Against Corruption measures to be taken to foster public support in combating corruption and to educate the public against the evils of corruption. • Receive and call for reports on action taken by the Community Relations Department of the Commission in pursuance of the above. • Monitor community response to the Commission's work and public attitudes towards corruption in general.

Membership (as at 1 Jan 2009): Mr Moses CHENG Mo-chi, GBS, JP (Chairman); Mr Walter CHAN Kar-lok, SBS, BBS, JP; Mr Michael CHAN Kee-huen; Miss Cecilia CHEN Sheau-ling, BBS, MH, JP; Mr CHOW Yick-hay, BBS, JP; Mr Simon IP Shing-hing, JP; Mr Patrick LAI Shu-ho, MH, JP; Miss Lisa LAU Man-man, MH, JP; Mrs Yvonne LAW SHING Mo-han; Mr LEE Luen-fai; Dr LI Pang-kwong; Ms MAR Yuet-har, BBS, MH; Professor Daniel SHEK Tan-lei, BBS, JP; Dr Maurice TSE Kwok-sang; Dr David WONG Yau-kar; Mr Christopher YU Wing-fai, MH and ex officio member:

- Commissioner, Independent Commission Against Corruption.¹⁵

There is also HK ICAC **Complaints Committee**: the Independent HK ICAC Complaints Committee monitors and reviews all non-criminal complaints against the HK ICAC or its staff. The Committee is chaired by an Executive Councilor and includes members of the Legislative Council and prominent members of the community appointed by the Chief Executive. An internal investigation and monitoring unit of HK ICAC follows up on complaints.

And there is also **HK ICAC Club** that was formed on 18 May 1997 to encourage the public to gain a deeper understanding about the work of the HK ICAC through active participation in various HK ICAC events and activities, and to earnestly take concerted efforts to promote a probity culture and build a clean, fair, stable and prosperous society.

Responsibilities of a Club member:

- Uphold the good name of the HK ICAC Club,
- Be an honest and upright citizen,
- Know and understand the corruption problems in Hong Kong,
- Promote messages of integrity and probity,
- Actively participate in anti-corruption activities,
- Encourage the public to report corruption.

The HK ICAC regularly arranges a host of activities for Club members to enhance their understanding about the corruption problems in Hong Kong and HK ICAC's work. Major activities include:

- Orientation activity: To familiarize new members with the HK ICAC's work, anti-corruption laws and responsibilities of an HK ICAC Club member,
- Annual gathering: Awards will be presented in this annual event to commend members who have volunteered their time and energy to assist in HK ICAC activities during the year,
- Regional gatherings: To facilitate sharing by members in the same region and to increase their sense of belonging to the respective Regional Offices.¹⁶

2.

New South Wales, Australia:

Independent Commission against Corruption (NSW ICAC)

NSW ICAC¹⁷ was created by the Independent Commission Against Corruption Act 1988. Its aims are to protect the public interest, prevent breaches of public trust and guide the conduct of public officials. The principal objectives of the Act are to promote the integrity and accountability of public administration through the establishment of the ICAC to:

¹⁵ http://www.icac.org.hk/en/checks_and_balances/ac/index.html

¹⁶ http://www.icac.org.hk/en/community_relations_department/icacc/index.html

¹⁷ <http://www.icac.nsw.gov.au/>

- investigate, expose and prevent corruption involving or affecting public authorities or public officials, and
- educate public authorities, public officials and members of the public about corruption and its detrimental effects on public administration and on the community.

The most important departure from the Hong Kong model is the NSW ICAC's authority to hold investigatory hearings – and to hold them in public where appropriate. This form of "government in the sunshine" gives the general public the ability to oversee parts of ICAC's operations directly.¹⁸

Accountability and cooperation with society

The NSW ICAC is a public authority, but is independent of the government of the day, and is accountable to the people of New South Wales (Australia) through the New South Wales Parliament. This independence is essential for the public to have confidence that the NSW ICAC is not biased or subject to the dictates of the government of the day.

To operate as Parliament intended and to ensure community confidence is maintained, the ICAC is both independent and accountable. The NSW ICAC is independent in that its operations, including investigations, are not subject to the direction of politicians, bureaucrats, any political party, or the government. Unlike most other publicly funded organizations, the NSW ICAC is not responsible to a Government Minister. It is responsible to the NSW Parliament through a Parliamentary Committee on the Independent Commission Against Corruption.

Because of its independence and powers, accountability to the people of NSW is ensured through **the Inspector of the NSW ICAC**, the Parliamentary Joint Committee on the NSW ICAC, regular reporting, and a range of other accountability mechanisms.¹⁹

The Inspector of the NSW ICAC provides a key element of the accountability regime for the NSW ICAC. The Inspector of the NSW ICAC is responsible for overseeing the NSW ICAC's use of its investigative powers and investigating any complaints against NSW ICAC staff. The Inspector of the NSW ICAC is also monitoring compliance with the law and any delays in the conduct of investigations or unreasonable invasions of privacy.²⁰

The Inspector is appointed pursuant to s.57A of the Independent Commission Against Corruption Act 1988 (the NSW ICAC Act) by the Governor. The Inspector reports to the NSW Parliament through the Parliamentary Joint Committee on the NSW ICAC. The Inspector is supported by a small number of staff who are employed in the Office of

18 ANTICORRUPTION AGENCIES (ACAs) OFFICE OF DEMOCRACY AND GOVERNANCE ANTICORRUPTION PROGRAM BRIEF, JUNE 2006, http://209.85.129.132/search?q=cache:NNhp3i_L-UUJ:www.usaid.gov/our_work/democracy_and_governance/publications/pdfs/ACA_508c.pdf+the+need+and+role+of+an+independent+anti-corruption+agency&cd=4&hl=lv&ct=clnk&gl=lv&client=firefox-a

19 <http://www.icac.nsw.gov.au/go/the-icac/what-is-the-icac/independence/-accountability>

20 <http://www.oiiac.nsw.gov.au/>

the Inspector of the NSW ICAC (the OIICAC).

Mr Graham Kelly was the inaugural Inspector of the NSW ICAC from 1 July 2005 to 30 September 2008. His Honour Harvey Cooper, AM, is the current Inspector. Mr Cooper's appointment commenced on 1 October 2008 and is for a period of three years.

The Inspector's functions and powers are set out in Part 5A of the NSW ICAC Act. Section 57B of the ICAC Act provides that the principal functions of the Inspector are:

- a. to audit the operations of the Commission for the purpose of monitoring compliance with the law of the State, and
- b. to deal with (by reports and recommendations) complaints of abuse of power, impropriety and other forms of misconduct on the part of the Commission or officers of the Commission, and
- c. to deal with (by reports and recommendations) conduct amounting to maladministration²¹ (including, without limitation, delay in the conduct of investigations and unreasonable invasions of privacy) by the Commission or officers of the Commission, and
- d. to assess the effectiveness and appropriateness of the procedures of the Commission relating to the legality and propriety of its activities.

The Inspector may exercise his functions on his own initiative or at the request of the Minister or in response to:

- a complaint made to the Inspector;
- a reference by the Joint Parliamentary Committee; or
- a reference by any public authority or public official.

Before The Inspector there was The Operation Review Committee that was abolished in May 2006 following the establishment of the Inspector of the NSW ICAC in July 2005.

The Operations Review Committee (ORC) was abolished in May 2006 as a result of amendments to the NSW ICAC Act passed by NSW Parliament. The main role of the ORC was to advise the Commissioner whether the NSW ICAC should discontinue or not commence an investigation of a complaint alleging corruption.

The abolition of the ORC was a recommendation of the Review of the NSW ICAC Act in 2005, as was the establishment of the office of the Inspector of the NSW ICAC which began operations in July 2005. In 2004, the Government commissioned Mr McClintock to review the Independent Commission Against Corruption Act. The terms of reference included reviewing the adequacy of accountability mechanisms for the Commission. In his report in January 2005, Mr McClintock recommended that the Operations Review Committee be abolished and an Office of the Inspector of the Commission be created. The McClintock report stated that despite the skill and dedication of its members, the Operations Review

21 Maladministration is defined under s.57B (4) as conduct of a kind that involves action or inaction of a serious nature that is:

- a. contrary to law; or
- b. unreasonable, unjust, oppressive or improperly discriminatory; or
- c. based wholly or partly on improper motives.

Committee is a limited accountability mechanism. He stated that the Inspector provides a structurally superior form of accountability than the Operations Review Committee for a number of reasons. The reasons for this include the fact that the Inspector has greater access to the Commission's records, the Inspector is completely independent (whereas the Chair of the Operations Review Committee is the Commissioner of the Commission) and the Inspector reports to Parliament. While the Inspector does not have the same function as the Operations Review Committee, the Government is of the view that he will achieve similar outcomes by ensuring that the Commission's practices and procedures are effective. Certainly, Mr McClintock reported that the Inspector would provide a more effective accountability mechanism than the Operations Review Committee. Inspector will ensure that a more systematic approach can be taken, improving the quality of the Commission's decision making processes.²²

Though as mentioned before, the Inspector does not take over all responsibilities of the committee, that's primary role was to advise the NSW ICAC before it made a decision not to investigate a complaint or to discontinue an investigation.

NSW ICAC Act had regulations on ORC in Part 6 Section 58 to 62 - ORC. The functions of the ORC were as follows:

(a) to advise the Commissioner whether the Commission should investigate a complaint made under this Act or discontinue an investigation of such a complaint,

(b) to advise the Commissioner on such other matters as the Commissioner may from time to time refer to the Committee.

The Commissioner shall consult with the Committee on a regular basis, and at least once every 3 months.

The ORC consisted of 8 members, being the following:

(a) the Commissioner, who shall be Chairperson of the Committee,

(b) an Assistant Commissioner, nominated by the Commissioner,

(c) the Commissioner of Police,

(d) a person appointed by the Governor on the recommendation of the Attorney General and with the concurrence of the Commissioner,

(e) four persons appointed by the Governor on the recommendation of the Minister and with the concurrence of the Commissioner, to represent community views.

The procedure for the calling of meetings of the ORC and for the conduct of business at those meetings shall be determined by the Committee. The Chairperson shall call the first meeting of the ORC in such manner as the Chairperson thinks fit. At a meeting of the Operations Review Committee, five members constitute a quorum, of whom one must be the Commissioner or Assistant Commissioner. The Chairperson or, in the absence of the Chairperson, the member who is an Assistant Commissioner shall preside at a meeting of the ORC. The person presiding at a meeting of the Operations Review Committee shall, in relation to the meeting, have all the functions of the Chairperson. The Chairperson or person presiding at a meeting of the ORC shall have a deliberative vote and, in the event of an equality of votes, shall also have a casting vote. A question arising at a meeting of the ORC shall

22 <http://www.parliament.nsw.gov.au/prod/PARLMENT/hansArt.nsf/V3Key/LC20060523048>

be determined by a majority of the members present and voting.

A member of the ORC who has a direct or indirect interest:

(a) in a matter being considered or about to be considered at a meeting of the Committee, or

(b) in a thing being done or about to be done by the Committee, shall, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Committee.

A disclosure by a member at a meeting of the ORC that the member:

(a) is a member, or is in the employment, of a specified company or other body, or

(b) is a partner, or is in the employment, of a specified person, or

(c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter or thing relating to that company or other body or to that person which may arise after the date of the disclosure.

After a member has disclosed the nature of an interest in any matter or thing, the member shall not, unless the ORC or (with the concurrence of the Commissioner) the Minister otherwise determines:

(a) be present during any deliberation of the Committee, or take part in any decision of the Committee, with respect to that matter, or

(b) exercise any function under this Act with respect to that thing.

A contravention of this section does not invalidate any decision of the ORC or the exercise of any function under this Act.²³

3.

Singapore: Corrupt Practices Investigation Bureau (CPIB)

When CPIB²⁴ was established in 1952 it faced a number of difficulties. The anti-corruption laws were inadequate and this had slowed down the gathering of evidence against corrupt individuals. Another problem was the lack of public support. Citizens did not co-operate with the CPIB as they were skeptical of its effectiveness and were afraid of reprisals.

According to the CPIB, this situation changed with the new Government which took power in 1959. Firm action was taken against corrupt officials, many of whom were dismissed from the service. Public confidence in the CPIB grew as people realized that the Government was sincere in its anti-corruption drive. Political will is the cornerstone of any anti-corruption efforts. According to CPIB, the combination of effective enforcement, anti-corruption laws, adjudication and administration are necessary to help ensure success in any anti-corruption movement, if there is political will to serve as strong foundation.²⁵

In its work CPIB follows a four-pillar framework to combat corruption through effective: law-enforcement; anti-corruption legislation,

23 Independent Commission Against Corruption Act 1988 No 35

24 http://appl.cpiib.gov.sg/cpiib_new/user/default.aspx?pgID=21

25 Specialised anti-corruption institutions. Review of models. OECD, 2007.

adjudication and administration.

Accountability and cooperation with society

CPIB is directly subordinated to the Prime Minister's Office. The bureau is headed by a Director who is directly responsible and report to the Prime Minister. There is **no known external supervision nor are there advisory bodies charged with supervision of the CPIB.**

4.

Lithuania: Special Investigation Service (STT)

The STT²⁶ was initially established in 1997 and in 2000 its mandate had been broadened in fields of investigation and prevention of corruption. It is recognized as one of a few successful copies of the Hong Kong model.

In addition to the STT, there are other specialized anti-corruption bodies in the field of prevention and co-ordination in Lithuania:

The Chief Institutional Ethics Commission (CIEC). The CIEC was established in 1999 as an independent body accountable to the Seimas (Parliament) consisting of five members (the President of the Republic, the President of the Seimas, and the Prime Minister each appoint one member, and the Minister of Justice appoints two) assisted by a small permanent Secretariat. Under the Law on the Adjustment of Public and Private Interests and the Law on the Prevention of Corruption the CIEC is the main control institution in the area of prevention of the conflict of interest of high-level public officials and the central authority in the field of analyzing ethical problems confronting the civil servants, providing expertise and recommendation concerning anti-corruption programs and reform of legislation in this field. It receives and within its scope of jurisdiction investigates complaints from the general public, and can initiate investigation on the basis of information received. While performing investigations it has the right to access information and documents from all other institutions, and may refer cases to the prosecution authorities or courts.

The Seimas Anti-corruption Commission (SACC). The SACC is a parliamentary body set-up in 2001. Its functions are described in the Law on Seimas Anti-corruption Commission and consist of monitoring of the implementation of the National Anti-corruption Programs, hearing reports of different institutions on their work in the anti-corruption field, analyzing and elaboration of legislative proposals in the area of corruption, and other financial and economic crimes. The Commission also receives complaints by citizens and has powers to request documents and experts assistance from other state institutions, to invite present and past state officials to give explanations on matters under elaboration, as well as to propose to other institutions to conduct inspections and resolve issues under their competence.

Interdepartmental Commission for Co-ordinating the Fight against Corruption (ICCFC). The ICCFC is a non-permanent body set-up in 2003

²⁶ <http://www.stt.lt/en/>

under the Government consisting of high representatives of different ministries and other bodies, e.g. the STT, which meets periodically to review and discuss co-ordination of the implementation of the National Anti-Corruption Program, as well as other activities of central and local government institutions and agencies in the areas of corruption prevention and detention of corruption-related violations of law.

Accountability and cooperation with society

The STT is accountable to the President of the Republic and to the Seimas, to which it has to provide semi-annual and annual performance reports. It does not report to the Government. **The public oversight is limited to the openness of the service though its public relations activities and regular publications of its reports and major activities.**

In spite of this, however, and especially in the light of its law enforcement nature, the STT has since its establishment maintained rather open and close co-operation with the civil society, e.g. the national chapter of the Transparency International.²⁷ They cooperate quite closely and systematically on different small and large scale projects, for example, the periodic project Lithuanian Map of Corruption. STT also works with other NGOs, e.g. Lithuanian Students Union, Modern Didactics Centre etc.

5.

Latvia: Corruption Prevention and Combating Bureau (KNAB)

KNAB²⁸ was set up in 2002 and its mandate combines prevention, education and investigation of corruption, following Hong Kong example.

KNAB is one of the most trusted public institutions in Latvia. When in 2007 KNAB's head was facing political attacks by Prime Minister, people were supporting KNAB in mass demonstrations that finally made Prime Minister Aigars Kalvitis to step down.

Accountability and cooperation with society

System of check and balances is a bit complicated as there are very different areas of KNAB's work and in each area system differs. Since 2005 KNAB is supervised directly by Prime Minister, but supervision powers are limited and Prime Minister has no right to give orders to KNAB. Also head of KNAB is elected and can be dismissed only by the Parliament. KNAB has obligation to submit activity reports to the Cabinet of Ministers and the Parliament every six months. KNAB submits also reports on party financing control, annual public reports and reports on implementation of national anti-corruption program. All these reports are public information that is available in Latvian and English also on the website.

The public oversight and involvement is ensured by the Public

²⁷ Specialised anti-corruption institutions. Review of models. OECD, 2007.

²⁸ <http://www.knab.lv/en/>

Consultative Council. The establishment of the Council in April 2004 followed the need to involve the public, an important element in the Hong Kong model, and also to increase public trust.

KNAB presented draft working rules and also chose organizations to participate in the Council. To make council more legitimate, system of organization representatives rather than individual experts has been chosen. The Council consists of 15 NGO representatives, including Foreign Investors Council of Latvia, Ethics Council, Latvian Medical Association, Association of Building Professions, Confederation of Employers, Union of Lawyers, Association of Commercial Banks, Association of Local Authorities, Trade and Industry Camera, Journalists Union, Transparency International Latvia, Public Policy Centre Providus. The members of the Council should be delegated from the NGOs interested and working with the anti-corruption topic. NGOs cannot delegate to the Council person that belongs to a political party. The Council itself accepts its members. The Council chooses its head for one year term. The head of the Council calls for the meetings and represents the Council. So far the Council has been headed by Mr. Valts Kalnins, researcher of the Public Policy Centre *Providus*.

The main task of the Council is to make assessments and give recommendations, for instance, the Council gave recommendations on improving prevention of corruption in the courts. It is aimed to ensure the participation of the public in drafting and implementing the anti-corruption policy and education of the public in Latvia.

The Council should seek to strengthen the link between KNAB and the public; provide recommendations on issues that should be worked on by KNAB; participate in the drafting and implementation of anti-corruption program; before providing recommendations, members of the Council should do consultations with the organizations that work in the sphere of their activities; inform those organizations about the recommendations of the Council; present report to KNAB on the activities of the Council once a year.

The Council has rights to invite external experts to participate in the work of the Council; to create working groups; to consult KNAB; to accept ethical codex of the Council and other documents; in one month time to receive from KNAB explanation why recommendations presented by the Council have not been taken into account; at least once in six months to receive activity report from KNAB.

The Council is operated through regular meetings that should be at least once in three months and that have protocols. The head of the Council, at least three members of the Council or the head of KNAB can call for extra meeting. Agenda is drafted by the head of the Council, including questions suggested by the members and the head of KNAB. The head of KNAB participates in the meetings. KNAB provides technical assistance to the Council and all documents should be available at least seven days before the meetings. Decision of the Council are taken by the majority of votes, to reach quorum at least 2/3 of the members of the Council are needed.

At the very beginning of its work the Council was quite active, for

example in 2005 11 meetings of the Council were held. The Council has taken decisions on actual issues few times and has provided recommendations to improve KNAB's work (e.g. the health sector, corruption in courts system).²⁹

Lately the Council has not been that active and even when it came together it usually did not have a quorum.

The Council due to the wide range of members represented does not work as expert pool for KNAB or as active partner and supporter that would be leader of the opinion and make statements in sensitive issues. The added value of the Council in the case of KNAB could be the real life feedback KNAB can get for its initiatives from the wide range of representatives of society - it works as a little test place (discussion club) where KNAB tests the reaction of public on its initiatives so that it can fine tune them before submitting to wider range of public. The Council can also initiated themes that KNAB should work on, but this takes lots of energy and most of the cases only few people are very interested in this as most of the members of the Council do not work with anti-corruption issues on everyday basis.

As experts note, it is possible that the other mechanisms for cooperation with state institutions in Latvia are in place and working well, thus there is no real need for the Council from the side of NGOs - the active anti-corruption NGOs, for example Transparency International Latvia, cooperate directly to KNAB on issues it is concerned about.

It is also agreed that in the context of Latvia's legislation function of oversight in, for example criminal investigations is not perspective. If instead of consultations and feedback on ideas KNAB would look for an expert pool, then the membership of the Council should be changed.

In addition there is another cooperation tool - **the Foreign Advisory Panel** that was formed soon after the establishment of the KNAB. It aims to provide a forum for the KNAB and foreign missions and international organizations to discuss the activities of the KNAB and needs for support and assistance. The Panel includes representatives of foreign embassies, missions, foreign businesses and international organizations. The Panel gets together twice a year in meetings organized by KNAB. For instance, its discussion can focus on the implementation of the National Program for Corruption Prevention and Combating, results of investigations, control of political parties financing, control of public officials, amendments to legal acts, etc.³⁰ FAP also provide an opportunity to both parties to express interest for further cooperation and support.³¹

There also used to be **Internal council** that could overrule decisions of the head of KNAB. It was initially supposed to be formed similar to

29 <http://www.knab.lv/en/knab/consultative/public/>

30 Specialised anti-corruption institutions. Review of models. OECD, 2007.

31 <http://www.knab.lv/en//knab/consultative/FAP/>

Hong Kong model and have four different committees that are formed from the members of civil society. But it ended up consisting of just KNAB deputy directors. It was abolished soon after creation.

6.

Korea:

**The Korea Independent Commission Against Corruption (KICAC) now integrated into:
the Anti-Corruption and Civil Rights Commission (ACRC)**

KICAC was established on January 25th, 2002 pursuant to the Anti-Corruption Act, which was enacted in July 2001. The KICAC was an independent and neutral body committed to the prevention of corruption and was responsible for handling corruption reports, developing institutional improvements, formulating and assessing anti-corruption policies and conducting educational and promotional activities.³² The KICAC engaged in nine major functions: Establishing and coordinating anti-corruption policies; Evaluating the levels of integrity and assessing the anti-corruption practices of public-sector organizations; Improving the legal and institutional framework; Handling reports on allegations of corrupt conduct; Offering protection and rewards to whistleblowers; Promoting ethics in public services; Raising public awareness on the risks of corruption; Promoting public and private partnership against corruption; Engaging in the global fight against corruption.

The KICAC was integrated into a larger agency entitled the Anti-Corruption and Civil Rights Commission (ACRC)³³, which was formally launched on 29 February 2008. This integration involved not only the KICAC, but also the Ombudsman of Korea and the Administrative Appeals Commission.

Transparency International Korea has stated that a contradictory and unconstructive law was passed on Anti-Corruption and the Establishment and Operation of ACRC. This law aims to integrate three different government institutions: KICAC, which is responsible for preventing corruption; the Ombudsman of Korea, which handles civil complaints; and the Administrative Appeals Commission, which is in charge of administrative adjudication. In addition to merging roles, which will affect the Commission's ability to focus on corruption issues, the independence of the anti-corruption function of the new Commission is seriously jeopardized. Whereas previously the KICAC was composed of nine commissioners recommended by the president, parliament and the Supreme Court, the new commission is almost entirely appointed by the president. Moreover, though the KICAC was formerly under the auspices of the president, ACRC is now under the control of the prime minister. A further indication of the Commission's lack of commitment to corruption is that while it calls itself the Anti-corruption and Civil Rights Commission in English, the Korean name for the ACRC is simply Civil Rights Commission.³⁴

32 <http://www.icac.org.hk/news1/issue18eng/button2.htm>

33 http://www.acrc.go.kr/eng_index.jsp

34 See also:

Accountability and cooperation with society

There is no institutional framework for cooperation with civil society such as permanent public council or public commission in ACRC.

7.

Poland: Central Anticorruption Bureau (CBA)

CBA³⁵ was established by the Central Anti-corruption Bureau Bill of 9 June 2006 which entered into force on 24 July 2006. CBA, as a specialized state service with police powers, combats corruption in public and private sector. The four main areas of activities of CBA are following: criminal investigation, corruption prevention, anti-corruption information and operational activities.³⁶

Accountability and cooperation with society

CBA is a centralized government administration office supervised by the Prime Minister. CBA has a special obligation to provide the Parliament with the information about the results of its activities as well as to submit the report to the Prime Minister and the Parliamentary Special Services Committee before 31 March each year.

CBA cooperates with public and private sector, including the NGOs and citizens, international organizations, but **the cooperation is not institutional - there are no public councils or committees formed.** The practical aspects of that kind of cooperation concern inter alia: daily contacts with appropriate organizations and persons, giving/participating in the conferences, seminars, workshops etc., Anti-corruption Information Team of Central Anticorruption Bureau daily works, Establishing (and daily actualizing) the portal: antykorupcja.edu.pl by the CBA, Anti-corruption information events, Corruption phenomenon analysis, Cooperating with appropriate public and private institutions on the anti-corruption strategy and other anti-corruption key issues incl. common working groups, reports.

8.

Tanzania: The Prevention and Combating of Corruption Bureau (PCCB)

In 1971, Tanzania pioneered the enactment of a Prevention of Corruption Act, which was amended in 1975 to establish an Anti-Corruption Squad within the police force. It is a little known fact that the establishment of the now famous Hong Kong Independent Commission Against Corruption drew inspiration from the Tanzanian case.³⁷

http://smg.or.kr/tikbbs/zboard.php?id=eng&page=1&sn1=&divpage=1&sn=off&ss=on&sc=on&select_arrange=headnum&desc=asc&no=60

35 <http://www.cba.gov.pl/portal/en/>

36 Common standards and best practice for anti-corruption agencies, EPAC Anti-corruption working group report. May, 2008.

37 UNDP CASE STUDIES IN ANTI-CORRUPTION TANZANIA,

<http://209.85.129.132/search?q=cache:l2ahLzGfGugJ:www.aman-palestine.org/English/documents/Official/Tanzania.pdf+%22prevention+of+corruption+bureau%22+tanzania+hong+kong&cd=4&hl=lv&ct=clnk&gl=lv&client=firefox-a>

In 1991 the name of Ant-Corruption Squad was changed to **the Prevention of Corruption Bureau (PCB)** by the Government notice No. 27 of 1991. The restructure of the Anti-Corruption Squad was the effort to form the anti-corruption body, which would apply the scientific approach to combat corruption. Despite all changes and amendments the functions and responsibilities of the PCB had remained the same as elucidated by the PCA No. 16 of 1971. PCB was a semi-autonomous governmental institution, which was entrusted to take necessary measures for preventing and combating corruption in Tanzania Mainland. It was a department under the supervision of the President's Office. PCB functions and responsibilities were: take necessary measures for the Prevention of Corruption in the public parasitical and private sectors; to investigate and subject to the directions of the Director of Public Prosecutions to prosecute for offences under the Act and other offences involving corrupt transactions; to advise the Government, parasitical organizations and private sector on the effective ways and means to Prevent Corruption.

PCCB³⁸ is established under **the Prevention and Combating of Corruption Act**, Act NO. 11 Of 2007 and replaces PCB. PCCB is an independent public body³⁹ in the United Republic of Tanzania entrusted with the role of leading the fight against corruption in the country. The core functions of the Bureau are stipulated in the PCCA namely: Prevention, Detection, Investigation, and to advise the public, the private and the civil society on ways and means of preventing corrupt practices and take remedial action.⁴⁰

Accountability and cooperation with society

The Anti-Corruption Squad was under the Ministry of Home Affairs. In the effort to make it more independent in execution of its duties, supervision of Anti-Corruption Squad affairs was shifted to the office of the Prime Ministry and PCB eventually to the President's Office. Now PCCB is independent body. Thus accounting of these institutions has changed over time.

PCB had Executive Committees of the Bureau that had full authority to make different decisions and also to insure that the Bureau's performance was in accordance with prevailing guidelines, regulations and legislation.

The committees were as follows: The Committee for Control and Evaluation and The Committee of Directors.

The committee for control and evaluation was responsible for overall supervision of the performance of the Bureau. The Committee for Control and Evaluation met whenever there was an agenda to be discussed.

38 <http://www.tanzania.go.tz/pcb/>

39 This is somewhat different to the position under the present Act where the Prevention of Corruption Bureau is a public department which is under the control and supervision of the President.

<http://209.85.129.132/search?q=cache:dtMShEw0L8oJ:www.parliament.go.tz/bunge/docs/professorHarchardJohn.pdf+%22Prevention+of+Corruption+Bureau+%22+board&cd=1&hl=lv&ct=clnk&gl=lv&client=firefox-a>

40 <http://www.commonwealth-of-nations.org/partner.php?partnerID=209>

However the Chief Secretary could call for a meeting any time whenever there were urgent matters to be discussed.

Members of the Committee were as follows: The Chief Secretary - Chairman; Director General of the Prevention of Corruption Bureau - Member; Director General of Tanzania Intelligence and Security System (TISS) - Member; Private Secretary to the President - Member; Director of Administration and Personnel, Prevention of Corruption Bureau - Secretary.

The Tasks of the Committee were to:

- (a) Receive, scrutinize and evaluate performance reports of the activities of the Bureau and to provide guidelines to the institution itself or other Government Departmental/Ministries.
- (b) Promote staff of the Bureau
- (c) Receive recommendations for promotions of the Bureau's staff to the Director level positions, heads of sections/units and officers in-charge of zonal office and to advise the President before appointments are effected.
- (d) Discuss and evaluate the Bureau's annual performance report.
- (e) Scrutinize and approve the Bureau's Budget.

The Committee of Directors met weekly. Members of the committee are as follows: The Director General - Chairman; The Director of Investigations - Member; The Director of Research, Control and Statistics - Member; The Director of Community Education - Member; The Director of Administration and Personnel - Secretary.

Tasks of the Committee are:

- (a) To evaluate generally the performance of the Bureau.
- (b) To issue work guidelines to Heads of the Divisions, sections/units and Regional Bureau Chiefs in order to make successful investigations and or improve management.
- (c) To discuss weekly performance reports of each Division of the Bureau and provides guidelines.
- (d) To receive, discuss and decide reports on disciplinary actions for the Bureau's staff.
- (e) To receive and discuss reports of staff for promotion.
- (f) To approve syllabus for staff training on corruption prevention and for foreign training.
- (g) To discuss and approve the Bureau's budget.
- (h) The committee may hold special meetings to discuss evaluate and decide on corruption reports involving employees in political parties, the Government and the private sector.

PCCB shall on or before 31st March on every year submit to President a report on its activities in the previous years - this is a new obligation of PCCB.

PCBB work is overseen administratively by a Board comprising members drawn from the private sector, civil society and the general public.⁴¹

41 <http://www.tzaffairs.org/2007/09/new-anti-corruption-act/>

PCCB Board whose functions include reviewing and providing advice on the work of PCCB. It is established in order to maintain both public confidence in the institution and high operational standards, the work of an anti-corruption commission needs to be subject to regular review. Board shall advise PCCB on any matter relating to corruption; consider the annual report of the PCCB before its submission to the President; review the operational staffing and administrative policies of the PCCB; advise the PCCB on administrative and disciplinary matters; receive various reports of the Bureau relating to performance of the Bureau; consider the annual estimate and expenditure of the Bureau.⁴²

PCCB Board consists of six members appointed by the President and they are also accountable to the President. Four of these are *ex officio* appointees i.e. the Chief Secretary, Attorney General, Director of the Tanzania Intelligence and Security Service; and the Inspector - General of Police. The other two members are to come from civil society and the private sector. The Director-General is the Secretary of the PCCB Board. The members of the PCCB Board shall elect Vice-Chairman for the term of one year.

It is provided that the PCCB Board shall meet not less than four times in a year when it is necessary and dates may be determined by the Chairman. The secretary shall give notice of a meeting not less than 14 days before the date.

The decisions of the PCCB Board shall be by a majority of votes, in the case of equality of votes the Chairmen shall have a casting vote in addition to his deliberative vote. The quorum shall be one third of the members amongst whom two shall be the Chief Secretary and Director General of the PCCB. The PCCB Board shall have minutes of each meeting.

Many Tanzanians have been highly critical about the new regulation - experts pointed serious shortcomings that could hinder an effective fight against petty and grand corruption. Wilbroad Slaa, lawyer and Secretary General of the opposition Chama cha Demokrasia na Maendeleo, said the structure of the proposed Prevention of Corruption Bureau advisory board would block the bureau from operating independently. "Obviously, an independent PCB does not exist under structures proposed by the new law". He said the board included two members one from the civil society and another from the private sector but the law did not specify how they were picked. Reginald Mengi, Chairman of Media Owners Association of Tanzania (MOAT), said: "By looking at the structure of the PCB advisory Board, one can question the independence of the institution. It sounds like a government agency and not a public institution, because most of its members come from the government." He said the law did not say whether or not PCCB should accept or reject advice given by the proposed advisory board. "It is obvious that under such circumstances, the board may advise PCCB to stop investigations of certain corruption cases. They have no alternative rather than accepting because the law does not give them powers to reject," said Mengi. The MOAT chairman proposed that the board be disbanded and instead an independent commission be formed to select board members. "Members to the PCB board should be accountable and responsible to the

⁴² The prevention and combating of corruption act, 2007. Article 16.

Parliament and not the President, as it is the case at the moment," he said.⁴³

It is also recommend for an effective PCCB Board by (i) inclusion of more members from private sector, media, CSOs including religious institutions and MPs, and (ii) a participatory decision making process which ensures a balanced representation of members from inside and outside government.⁴⁴

It is also noted, that given the scope of the PCCB's functions and to increase public confidence in its work, it may be helpful to consider whether to provide for greater representation from the private sector and civil society. Whilst the President appoints those from outside the public service, the procedure for doing so is not addressed. There may be some value in ensuring transparency in the appointment process. Similarly the President has the power to terminate the appointment of any member other than the Chief Secretary. Consideration might be given as whether to make provision for an independent removal process or at least require the giving of reasons publicly for the decision.

The quorum at any meeting of the Board is one third of the membership. This means that decisions of the Board could be taken without the presence of either of the representatives from outside the public service.

No provision is made for the Board to make an annual report on its activities or on the work of the Bureau. Its usefulness would be enhanced if there were a requirement that an annual report on these matters is published and sent to parliament.

The role of the Board regarding annual expenditures and estimate needs clarification as to whether it is to have an oversight role and, if so, whether this includes the power to reject or amend the estimates.

Law enforcement type institutions:

9.

Romania: National Anticorruption Directorate (NAD) Anti-Corruption General Directorate (AGD)

The first specialized anticorruption prosecutor's office was set up on the 1st of September 2002, on the basis of the Government Emergency Ordinance no. 43/2002, as an independent prosecutor's office within the Public Ministry, named, at that time, the National Anticorruption Prosecutor's Office (NAPO). The status and organization of NAPO supported additional legislative amendments during the years of its existence. According to the last amendment, occurred through the Law no. 54/9.03.2006, the anticorruption structure was reorganized as the **National Anticorruption Directorate (NAD)**⁴⁵ - a structure with legal

43 <http://www.ippmedia.com/ipp/guardian/2007/03/22/86815.html>

44 <http://www.business-anti-corruption.com/country-profiles/sub-saharan-africa/tanzania/initiatives/public-anti-corruption-initiatives/>

45 <http://www.pna.ro/>

personality functioning within the Prosecutor's Office attached to the High Court of Cassation and Justice.

NAD is led by the general prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice, who carries out his attributions through the chief prosecutor of NAD. The chief prosecutor of NAD, his two deputies as well as the prosecutors chiefs of sections and their deputies are appointed by the President of Romania, at the proposal of the minister of justice, following the opinion of the Superior Council of the Magistracy.

The NAD carries out criminal investigation and prosecution for the offences provided by the Law no. 78/2000, with the limitations mentioned by the Emergency Ordinance no. 43/2002, as amended. The amendments were meant to insure that the specialized anticorruption prosecution office is focused to its mission, which is **to fight the high level corruption**.

As NAD competence is only to fight the high level corruption, there are examples of other institutions established to fight other corrupt practices. For example, within the Ministry of Administration and Interior **Anti-Corruption General Directorate (AGD)**⁴⁶ was established in 2005. It is a specialized structure for preventing and combating corruption within the Ministry of Interior and Administrative Reform (MoIAR) personnel.

Accountability and cooperation with society

AGD: The Strategy for Preventing and Combating Corruption within MoIAR Personnel includes the most important steps necessary for taking coherent and efficient measures in order to prevent and combat corruption within ministry's personnel. On the basis of this Strategy, the **Strategic (or steering) Committee for supporting and assessing AGD activity**⁴⁷ was set up and is made up of Secretaries of State, heads of central MoIAR structures, head of National Policemen Corpus and three representatives from three NGO's. It is intended to extend the number of the civil society representation from three NGO's to 10 NGO's.

The committee is being led by the Secretary of State Chef of Department for Safety and Public Order. The representatives of the civil society were appointed following certain discussions with the Forum for Transparency, one representative of the relevant NGOs in the field being included in this Committee, as follows: Romanian Association for Transparency, Romanian Academic Society Association for Implementing Democracy.

The Committee annually elaborates an Evaluation Report on the efficiency of the Anti-Corruption Strategy and AGD activity, submitted to the minister of administration and interior.

Within the Steering Committee there is an **Observing Subcommittee** for analyzing, according to law, the way the information received from AGD and other legal sources are used in the process of preventing and

46 <http://www.mai-dga.ro/index.php?l=en&t=34>

47 <http://www.mai-dga.ro/index.php?l=en>

combating corruption. The Subcommittee will draw and present to the Committee, twice a year, reports on their conclusions. The reports will include general comments over the number of the checked information and appreciations on the way they were used by AGD staff.

The Subcommittee is made up of five members who are also members in the Committee, as follows:

- a) director of the General Informing and Public Relations Directorate;
- b) three NGOs representatives;
- c) general director of the General Directorate of Legal Regulations.

NAD draws up annual reports that are submitted to the Parliament, it has no institutional cooperation with society.

10.

Austria: The Bureau for Internal Affairs (BIA)

BIA⁴⁸, also designated as Department IV/6, is an autonomous agency of the Austrian Federal Ministry of the Interior that operates outside the classical law enforcement structures and was established in 2001.

In its capacity as an independent autonomous organizational unit which is not bound by instructions regarding the cases it handles, it conducts security and criminal police investigations in cases of corruption or suspected malpractice by public officers. In such cases, the BIA co-operates directly with the competent public prosecutor's offices and courts.

The BIA conducts investigations nationwide and, given its sphere of responsibilities, represents a centre of competence for all other security services. Other important tasks performed by the BIA are training programs and the prevention of corruption. In addition to organizing and conducting courses, seminars and advanced career coaching programs at the Austrian Law Enforcement Academy for colleagues from the Ministry of the Interior, BIA staff members have repeatedly been invited to give lectures at national and international educational institutions and at conferences.

The BIA interacts with a number of local government bodies, NGOs and interest groups involved in anti-corruption activities.

The national and international fight against corruption was one of the focal points of the Austrian Ministry of the Interior during Austria's EU Presidency in the first half of 2006 and will continue to be so in the future.⁴⁹

Accountability and cooperation with society

BIA and Transparency International Austria (TI-AT) have been in close contact since the foundation of TI-AT and have established a continued

48 http://www.bia-bmi.at/cms/bia_en/_news/start.aspx

49 http://www.bia-bmi.at/cms/bia_en/general_infomat/start.aspx

mutual support with regard to events, trainings, seminars, publications, etc. Moreover, the membership of the Director of BIA in the Advisory Board of TI-AT has been, from the very beginning of the Board, the basis for a close relationship at personal level between the BIA and TI-AT. The cooperation goes beyond mere openness and has developed into a visible and continued cooperation, which is just not formalized and institutionalized.

Preventive, policy development and co-ordination institutions:

11.

France:

Brigade Centrale de Lutte contre la Corruption (Central Anti-Bribery Brigade) (**BCLC**)
Central Service for Prevention of Corruption (**SCPC**)

BCLC is an investigative anti-corruption body, which treats all forms of public and private corruption. BCLC has a particular focus on corruption of foreign public agents. It also deals with infringement of the company laws. Corruption prevention is the competence of the Central service of prevention of the corruption (**SCPC**).⁵⁰

SCPC was established in 1993. It is attached to the Ministry of Justice. The SCPC is a relatively small body but it has diverse expertise as it brings together seconded experts from various judicial and administrative bodies. The SCPC collects information and provides independent expert advice on corruption risks and corruption cases under investigation. Most of requests are from local authorities. The SCPC increasingly provides training and assistance on codes of conduct for public and private enterprises.

Accountability and cooperation with society

SCPC is attached to the Ministry of Justice and reports to the head of the Cabinet of the Minister of Justice. Neither the government nor the Minister of Justice can give instructions to the SCPC and its members. According to its regulation, the SCPC provides an annual report to the Prime Minister and the Minister of Justice. Each year the report contains an analysis of selected sectors of economy with regards to corruption risks, as well as practical notes on criminal offences. The report often is related to issues covered by the opinions provided by the SCPC. The report is available for public.

There is a permanent liaison committee of the SCPC composed of members of various government departments and civil society. This committee aims to provide assistance in the areas of centralization of information and research.

Members of the Liaison Committee include Accounts Chamber, General Inspection of Administration, General Inspection of Finances, Inspection of Judicial Services, Ministry of Foreign Affairs,

⁵⁰ Common standards and best practice for anti-corruption agencies, EPAC Anti-corruption working group report. May, 2008.

engineering school, General Council of Mining, National Police, Gendarmerie, customs, tax, competition, consumption and frauds repression authorities, Ministry of Justice, Conferences of presidents of appeal courts and of Prosecutors General, general control department of national railways company.⁵¹

12.

Albania:

The Governmental Commission for the Fight against Corruption (GCFAC) The Anti-Corruption Monitoring Group (ACMG)

GCFAC was established in 1999 as an inter-ministerial body. Its mandate is to lead and supervise the implementing of the National Anti Corruption Plan and to prepare government's decisions concerning the Plan. The Commission also has oversees the activities of the ACMG.

ACMG was established by the government in 2000. It is composed of a non-permanent Board and Permanent Anti-Corruption Unit attached to the office of the Minister of State. The Group monitors the implementation of the National Anti-Corruption Plan and develops progress reports to the government.

Accountability and cooperation with society

ACMG reports to the Council of Ministers and to the **GCFAC**, headed by the Prime Minister. Every three months a summary of the ACMG reports is presented to the Government. All reports discussed in the meetings of the ACMG are made public through media and Internet and presented to the GCFAC.

The ACMG is also open to the non-governmental organization working in the area of corruption. **Any interested party can be invited to participate as observer in the meeting of the AMCG Board.**⁵²

13.

Slovenia: Commission for the Prevention of Corruption (CPC)

CPC⁵³ is an independent state institution established in 2004 by Prevention of Corruption Act (PCP). It is a preventive anti-corruption body, including functions such as education, but has neither powers nor functions to investigate corruption.

Accountability and cooperation with society

CPC prepares annual reports to the Parliament and quarterly reports to a special commission within the Parliament concerning financial disclosures and gifts.⁵⁴

51 Specialised anti-corruption institutions. Review of models. OECD, 2007.

52 Specialised anti-corruption institutions. Review of models. OECD, 2007.

53 <http://www.kpk-rs.si/>

54 Common standards and best practice for anti-corruption agencies, EPAC Anti-corruption working group report. May, 2008.

In addition Article 17.of PCP (Coordination tasks of the Commission) defines that Commission shall a) cooperate with related bodies in other countries and international integrations bodies and international non-governmental organizations engaged in the prevention of corruption and b) cooperate with scientific, professional, media and other non-governmental organizations and associations as regards their work relating to the prevention of corruption.

Furthermore, the Commission has adopted its Rules of Procedure, which regulate in detail the organization and method of Commissions work. Article 15 of Rules of Procedure defines: Non-governmental organizations whose basic activity is the prevention of corruption may be invited to the sessions of the Commission (The Commission is operating and making decisions as a collegial body. It discusses cases on sessions where it adopts opinions, standpoints and other decisions, which must be adopted by the majority of votes of all members.), as well as other organizations or individual persons for whom the Commission estimates that their knowledge and experience may contribute to successful treatment of individual items of the agenda. These mentioned persons may not participate in the items of the agenda where the reports on the financial situation of the functionaries are dealt with other personal or classified information.

CONCLUSIONS

It is impossible to identify "best models" or blueprints for establishing anti-corruption institutions and also for cooperation with society. Anti-corruption institutions itself differ very much in their powers, functions, independence degree, historical background and national context, thus institutional transplants from foreign systems are likely to fail if they are not adequately adapted to the local political, cultural, social, historical, economic, constitutional and legal background. This actually means that though there are some models of cooperation that could be followed and some lessons learned from experience of others, in practice any new public council or similar body would need to be built from the beginning.

There are many functions that effective cooperation with society can ensure. For example, it can ensure independence of anti-corruption agency; build public support and trust; ensure credibility and transparency of anti-corruption agency's work; ensure accountability of anti-corruption agency towards society; provide information and feedback to anti-corruption agency; work as think tank - resource center etc.

Depending on the powers, functions and independence degree of anti-corruption institution there might be different needs for cooperation with society, for example if there is a high level degree of independence of the institution, civil society can form crucial part of accounting mechanism. On the other hand, if the degree of independence of the institution is lower and there are many other accounting mechanisms, there might not be any need to double those mechanisms from the side of civil society. Depending on the function that needs to be fulfilled, different model of cooperation has to be chosen.

Ways for cooperation of society depend very much on national social and legal system - countries that already have good mechanisms of cooperation between civil society and state institutions seem to have no need for additional institutionalized cooperation mechanisms. Also no need for public councils or similar bodies seems to be in countries that have some different regulations for cooperation, for example if the anti-corruption bodies hold public hearings or there are some other anti-corruption bodies in the country that provide cooperation mechanisms. On the other hand, for example if there is lack of information publicly available, the need for institutionalized cooperation is much higher.

There are different approaches for membership, also closely linked on functions provided for public councils or similar bodies. Public councils or similar bodies consist of civil society and state representatives or just civil society representatives. Sometimes also political parties - both representing coalition and opposition - can be involved. Civil society is represented by NGOs, other active society groups (businesses, religious organizations) or by individual community leaders, academic staff. In some cases there are formed internal oversight bodies that do not involve representatives of society as the questions they examine might contain not publicly available information.

Usually the problems public councils or similar bodies face are: lack of regular activities and no regular reporting, lack of accountability mechanisms themselves, no systematic approach, not equal representation of civil society members and public officers, unclear procedure for choosing members, unclear structure etc. These are the questions that have to be carefully considered when deciding on public council.

Effective cooperation with civil society alone will still not provide for the wished results. There are two more important aspects that need to be considered. Political will is the corner-stone of any anti-corruption efforts, if operating in a hostile political environment for longer time, anti-corruption institutions are likely to fail. Civil society of course can help to form this will, especially if civil society itself is united in the aim of fighting corruption. The other aspect is that for the anti-corruption institution is important to *fry big fish*, because without touchable results there will be no public support.⁵⁵

55 Kalnins V., Honkongas modelis pret korupciju Latvija. Politika.lv