

A Comparative Analysis of Anti-corruption Machinery of State

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OECD principles based on the experience of OECD countries

*“Integrity is the backbone of political, economic and social structures”*¹ according to the OECD Council on Public Integrity in its draft 2016 recommendation.

The principles of the 1998 recommendation of the OECD Council on Improving Ethical Conduct in the Public Service as a way of integrating ethics management with the broader public management environment

Considering that ethical conduct in the public service contributes to the quality of democratic governance and economic and social progress as well as that public service integrity is essential for global markets to flourish² the OECD Council on Improving Ethical Conduct in the Public Service demanded in its 1998 recommendation that Member countries take steps to ensure well- functioning institutions and systems for promoting ethical conduct in the public service.

In the view of the Public Management Service (PUMA) *a growing sense of mistrust and an apparent decline of confidence in government and public service is observed amongst citizens*. However, from its point of view, *the success of ensuring a better ethical environment depends on the proper management of the entire ethics infrastructure.*³

Accordingly, the OECD Council on Improving Ethical Conduct in the Public Service stated in its 1998 recommendation that it is necessary for countries to develop, and regularly review policies, procedures, practices and institutions which are influencing ethical conduct in the public service by using the concrete recommended 12 OECD principles as a guideline.

These principles have been developed by the member countries amongst others as response to the increased concern about decline of confidence in government due to corruption. The principles therefore identify the functions of guidance, management or control against which public ethics management systems may be checked.

¹Draft recommendation of the OECD Council on Public Integrity from 2016 retrieved on 26.01.2017 <http://www.oecd.org/governance/ethics/OECD-Public-Consultation-Draft-Recommendation-on-Public-Integrity.pdf>.

²1998 recommendation of the OECD on Improving Ethical Conduct in the Public Service retrieved on 26.01.2017 <http://www.oecd.org/gov/oecdprinciplesformanagingethicsinthepublicservice.htm>

³Public Management Service (PUMA) in FOCUS, Public Management Gazette Number Nine, *Managing ethics: An OECD Recommendation* retrieved on the 26.01.2017, www.oecd.org/gov/digital-government/1900037.pdf

Having regard to the STIRS criteria established in the Glenister cases in South Africa it is the last principle mentioned (“*appropriate procedures and sanctions should exist to deal with misconduct⁴*”) which has to be examined more closely:

In its recommendation the OECD Council concretizes the principle that *mechanisms for the detection and **independent** investigation of wrongdoing such as corruption are a necessary part of an ethics infrastructure and that it is necessary to have reliable procedures and **resources** for monitoring, reporting and investigating breaches of public service rules, as well as commensurate administrative or disciplinary sanctions to discourage misconduct.*⁵

Furthermore the council states that *the elements of an ethics infrastructure can be categorised according to the main functions they serve: guidance, management and control, whereat control is assured primarily through a legal framework enabling **independent** investigation and prosecution, **effective** accountability and control mechanisms, transparency, public involvement and scrutiny.*⁶

Clearly the OECD Council and the OECD member countries agreed that corruption cannot be fought effectively and thus an ethics infrastructure cannot be created and maintained if there is not an effective law enforcement entity which investigates and prosecutes with adequate independence. Without deterrence corruption is apt to flourish.

A draft recommendation of the Council on Public Integrity to replace the 1998 recommendation as result of new insights

In 2016 the OECD’s Public Governance Committee, through its Working Party of Senior Public Integrity Officials (SPIO) has elaborated the draft recommendation of the Council on Public Integrity as a response to new insights. It proposes to abrogate the 1998 Recommendation and replace it with the new draft recommendation.

It recommends that countries should *ensure that government units or bodies (including autonomous or independent ones) responsible for the development, implementation,*

⁴1998 recommendation of the OECD on Improving Ethical Conduct in the Public Service retrieved on 26.01.2017 <http://www.oecd.org/gov/oecdprinciplesformanagingethicsinthepublicservice.htm>

⁵1998 recommendation of the OECD Council of Improving Ethical Conduct in the Public Service retrieved on 26.01.2017 <http://www.oecd.org/gov/oecdprinciplesformanagingethicsinthepublicservice.htm>

⁶1998 recommendation of the OECD Council of Improving Ethical Conduct in the Public Service retrieved on 26.01.2017 <http://www.oecd.org/gov/oecdprinciplesformanagingethicsinthepublicservice.htm>

*enforcement and/or monitoring of elements of the integrity system have **adequate mandate, capacity, expertise and resources** to effectively fulfil their responsibilities.*⁷

Furthermore it recommends that there should be *provisions of alternative channels for reporting irregularities and misconduct, including the possibility of reporting to a body with the mandate and **capacity** to conduct an **independent** investigation.*⁸

It also states that the countries should build a culture of integrity by creating *a merit based professional public sector dedicated to public service values and good governance, in particular through ensuring that central units or bodies (including **autonomous or independent** ones) responsible for the development, implementation, enforcement, and/or monitoring of elements of the merit based system within their jurisdiction have **the mandate, expertise and resources** to effectively fulfil their responsibilities.*⁹

Finally the OECD Council recommends to *ensure accountability, and effective control and enforcement of public integrity by ensuring **external** oversight and control that promote public accountability and integrity through:*

- **Firstly:** *ensuring that **autonomous or independent** regulatory and investigative entities defend the public interest through the impartial enforcement of laws and regulations applying to both public and private organisations, as well as citizens;*
- **Secondly:** *ensuring that external oversight entities are **autonomous or independent**, with adequate authority, mandate, **capacity, expertise and resources** to fulfil their responsibilities, **including the right to impose sanctions**, as established in law.*¹⁰

It emerges that the STIRS criteria, which were established from the Glenister cases, represent for the OECD Council essential requirements of an effectively working anti-corruption-entity which is in their view necessary for a well functioning integrity system and thus for the economic and social well-being and successful development of a country.

⁷Draft recommendation of the Council on Public Integrity retrieved on 26.02.2017
<http://www.oecd.org/governance/ethics/OECD-Public-Consultation-Draft-Recommendation-on-Public-Integrity.pdf>.

⁸Draft recommendation of the Council on Public Integrity retrieved on 06.01.2017
<http://www.oecd.org/governance/ethics/OECD-Public-Consultation-Draft-Recommendation-on-Public-Integrity.pdf>.

⁹Draft recommendation of the Council on Public Integrity retrieved on 26.01.2017
<http://www.oecd.org/governance/ethics/OECD-Public-Consultation-Draft-Recommendation-on-Public-Integrity.pdf>.

¹⁰Draft recommendation of the Council on Public Integrity retrieved on 26.01.2017
<http://www.oecd.org/governance/ethics/OECD-Public-Consultation-Draft-Recommendation-on-Public-Integrity.pdf>.

The UN Approach

“Corruption strangles people, communities and nations. It weakens education and health, undermines electoral processes and reinforces injustices by perverting criminal justice systems and the rule of law. By diverting domestic and foreign funds, corruption wrecks economic and social development and increases poverty. It harms everyone, but the poor and vulnerable suffer most”¹¹ that is how former UN Secretary General Ban Ki Moon has summed up the notion of corruption on occasion of the International Anti-Corruption Day on December, 9th 2016.

A. United Nations Convention against Corruption

The United Nations Convention against Corruption has a similar approach to this “evil phenomenon”¹². Its foreword says “Corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organized crime, terrorism and other threats to human security to flourish.”¹³

As a consequence, Article 6 of the UN Convention Against Corruption, that South Africa has signed on 3 December 2003¹⁴, obliges its State Parties to *ensure the existence of a body or bodies, as appropriate, that prevent corruption by such means as*” (...) “(b) Increasing and disseminating knowledge about the prevention of corruption.” The Convention stipulates that “each State Party shall grant the body or bodies (...) the necessary **independence**, (...) to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material **resources** and **specialized** staff, as well as the **training** that such staff may require to carry out their functions, should be provided.”¹⁵

The STIRS criteria (specialisation, training, independence, resources, security of tenure of office) that are within the OECD principles also appear in the UN Convention Against Corruption and are regarded as highly important for ensuring the effectiveness of an anti-corruption entity.

¹¹ <http://www.un.org/en/events/anticorruptionday/messages.shtml> retrieved on the 23.01. 2017

¹² UN Convention Against Corruption, 2003, retrieved on 23.01. 2017
<http://www.unodc.org/unodc/de/treaties/CAC/>

¹³ UN Convention Against Corruption, 2003, retrieved on 23.01.2017
<http://www.unodc.org/unodc/de/treaties/CAC/>

¹⁴ <https://www.unodc.org/unodc/en/treaties/CAC/signatories.html> retrieved on 29.01. 2017

¹⁵ UN Convention Against Corruption, 2003, retrieved on 23.01.2017
<http://www.unodc.org/unodc/de/treaties/CAC/>

Furthermore the Convention emphasises the importance of preventive anti-corruption policies (Article 5 and Article 35) and urges the State Parties to protect witnesses and victims (Article 32 and Article 33).

B. Sustainable development goals

The emphasis given to the combat of corruption by the United Nations is underlined by the fact that it has been explicitly made part of the 2030 Agenda for Sustainable Development adopted in 2015 that sets out 17 Sustainable Development Goals.

Goal 16 aims to “Promote peaceful and inclusive societies for sustainable development; provide access to justice for all and build effective, accountable and inclusive institutions at all levels”¹⁶. Substantially reducing corruption and bribery in all their forms is pointed out as a crucial target within this goal.

In fact, ‘Corruption is the thief of economic and social development; stealing the opportunities of ordinary people to progress and to prosper’¹⁷ as Yury Fedotov, Executive Director of the United Nations Office on Drugs and Crime, pointed out in his address to the Fifth Session of the Conference of the State Parties to the United Nations Convention against Corruption in Panama City in 2013.

Jakarta Statement on Principles for Anti-Corruption Agencies

In November 2012 current and former heads of anti-corruption agencies and other experts from around the world were invited to a conference in Jakarta held by the Corruption Eradication Commission (KPK) Indonesia, the United Nations Development Programme (UNDP) and the United Nations Office on Drugs and Crime (UNODC) to discuss a set of “Principles for Anti-Corruption Agencies” to promote and strengthen the independence and effectiveness of Anti-Corruption-Agencies (ACA).¹⁸

The following principles deserve to be highlighted:

¹⁶ Transforming our world: the 2030 Agenda for Sustainable Development, <https://sustainabledevelopment.un.org/post2015/> transforming our world, retrieved on 24.01.2017

¹⁷ <https://www.unodc.org/unodc/en/press/releases/2015/November/eliminating-corruption-is-crucial-to-sustainable-development.html> retrieved on 24.01.2017

¹⁸ Jakarta Statement on Principles for Anti-Corruption Agencies https://www.unodc.org/documents/corruption/WG-Prevention/Art_6_Preventive_anti-corruption_bodies/JAKARTA_STATEMENT_en.pdf. retrieved on 24.01.2017

- **Permanence:** ACAs shall, in accordance with the basic legal principles of their countries, be established by proper and stable legal framework, such as the Constitution or a special law to ensure continuity of the ACA.
- **Removal:** ACA heads shall have *security of tenure* and shall be removed only through a legally established procedure equivalent to the procedure for the removal of a key independent authority specially protected by law (such as the Chief Justice).
- **Authority over human resources:** ACAs shall have the power to recruit and dismiss their own staff according to internal, clear and transparent procedures.
- **Adequate and reliable resources:** ACAs shall have sufficient financial *resources* to carry out their tasks, taking into account the country's budgetary resources, population size and land area. ACAs shall be entitled to timely, planned, reliable and adequate resources for the gradual capacity development and improvement of the ACA's operations and fulfilment of the ACA's mandate.
- **Public communication and engagement:** ACAs shall communicate and engage with the public regularly in order to ensure public confidence in their independence, fairness and effectiveness.

Comparative law analysis in relation to mechanisms for fighting corruption

“Corruption is a complex social, political and economic phenomenon that affects all countries”¹⁹ as the webpage of the United Nations says.

According to a Transparency International media release, corruption increases inequality and fuels populism in a way that is increasingly successful these days.²⁰

The global importance of this problem is shown by the fact that the perception of corruption in 2016 has worsened in more countries than it has been improved.²¹ The “vicious cycle”²²

¹⁹ <http://www.un.org/en/events/anticorruptionday/background.shtml> retrieved on 24.01.2017.

²⁰ https://www.transparency.org/news/feature/corruption_Perceptionss_index_2016 retrieved on 26.01.2017; Emma Rummney, Populism fuelled by increased corruption, Transparency International warns, Public Finance International, 25.01.2017

<http://www.publicfinanceinternational.org/news/2017/01/populism-fuelled-increased-corruption-transparency-international-warns> retrieved on 26.01.2017

²¹ https://www.transparency.org/news/feature/corruption_Perceptionss_index_2016 retrieved on 26.01.2017

²² https://www.transparency.org/news/feature/corruption_Perceptionss_index_2016 retrieved on 26.01.2017

between corruption, inequality and poverty and the creation of exclusive societies driven by populist ideas can only be stopped if corruption is combated effectively. Different countries have different ways to face this problem.

Which lessons can be drawn from other countries and which mistakes can be avoided?

A. Hong Kong

Hong Kong is nowadays amongst the 15 cleanest countries in the world concerning the perception of corruption according to Transparency International's "Corruption Perceptions Index 2016".²³

I. History / What led to the establishment of an anti-corruption entity? The situation in Hong-Kong before the establishment of the ICAC

The situation in Hong Kong was not always that promising, however. Quite the contrary, around 40 year ago corruption was rather considered a normal way of life it existed '*from womb to tomb*'²⁴ so that - to name only one of many examples – even ambulances asked for 'tea money' before picking up a sick person.²⁵

In 1973, after a corrupt police officer under investigation had successfully fled the country, the public was brought into the arena and many public protests arose so that the government was called to action.²⁶

At that time the anti-corruption-entity was placed within the police and it was therefore prone to abuse what led to a lack of independence and credibility.

Indeed the leader of the independent Commission that was installed to investigate the 1973 scandal, Sir Alastair Blair-Kerr, a Senior Judge, pointed out in his report: '*responsible bodies generally feel that the public will never be convinced that Government really intends to fight corruption unless the Anti-Corruption Office is separated from the Police*'²⁷.

²³ Corruption Perceptions Index 2016

https://www.transparency.org/news/feature/corruption_Perceptions_index_2016 retrieved on 26.01.2017

²⁴ Kwok Manwai, Comprehensive & Effective Approach to Anti-Corruption. The Hong Kong ICAC Experience, with a View on New Approaches in the Fight Against Corruption, http://www.kwok-manwai.com/articles/Comprehensive_Effective.html retrieved on 24.01.2017

²⁵ http://www.icac.org.hk/en/about_icac/bh/index.html Kwok Manwai, Comprehensive & Effective Approach to Anti-Corruption. The Hong Kong ICAC Experience, with a View on New Approaches in the Fight Against Corruption; http://www.kwok-manwai.com/articles/Comprehensive_Effective.html retrieved on 24.01.2017

²⁶ http://www.icac.org.hk/en/about_icac/bh/index.html;

²⁷ http://www.icac.org.hk/en/about_icac/bh/index.html retrieved on 24.01.2017

Following this advice the Independent Commission against Corruption (ICAC) was established in February 1974.²⁸

In the first years of its activities the ICAC had many enemies especially the public servants who were afraid of being detected in their former corrupt activities and those officials who missed the extra pay-offs.²⁹

In 1977 the then-governor of Hong Kong decided on a partial amnesty for cases of corruption that occurred before 1977. This decision had been criticized a lot but seemed to be wise to make the civil servants follow the line of the ICAC without fear of being subject to investigations themselves.³⁰

II. Legal Framework

The ICAC Ordinance stipulates the statutory mandate of the ICAC in combating corruption through investigation, prevention and education.³¹

The existence of an anti-corruption Commission is constitutionally guaranteed in Hong Kong. Article 57 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China stipulates the following:

*“A Commission Against Corruption shall be established in the Hong Kong Special Administrative Region. It shall function independently and be accountable to the Chief Executive.”*³²

Article 48 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China says:

²⁸ http://www.icac.org.hk/en/about_icac/bh/index.html retrieved on 24.01.2017

²⁹ China Morning post, 15.01.2014, Forty years since its creation, how the ICAC cleaned up corruption in Hong Kong, <http://www.scmp.com/news/hong-kong/article/1428093/forty-years-its-creation-how-icac-cleaned-corruption-hong-kong> retrieved on 24.01.2017

³⁰ China Morning post, 15.01.2014, Forty years since its creation, how the ICAC cleaned up corruption in Hong Kong, <http://www.scmp.com/news/hong-kong/article/1428093/forty-years-its-creation-how-icac-cleaned-corruption-hong-kong> retrieved on 24.01.2017

³¹ http://www.icac.org.hk/en/about_icac/is/index.html retrieved on 26.01.2017

³² Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, http://www.basiclaw.gov.hk/en/basiclawtext/chapter_4.html retrieved on 26.01.2017

“The Chief Executive of the Hong Kong Special Administrative Region shall exercise the following powers and functions: (...) to nominate and to report to the Central People's Government for appointment the following principal officials: (...) Commissioner Against Corruption”³³.

The Independent Commission Against Corruption Ordinance contains the following passage in Section 5:

“Section: 5 Office of Commissioner

(1) The Commissioner, subject to the orders and control of the Chief Executive, shall be responsible for the direction and administration of the Commission.

(2)

(2) The Commissioner shall not be subject to the direction or control of any person other than the Chief Executive.”³⁴

III. Organisation of the ICAC / Fulfilment of the STIRS criteria

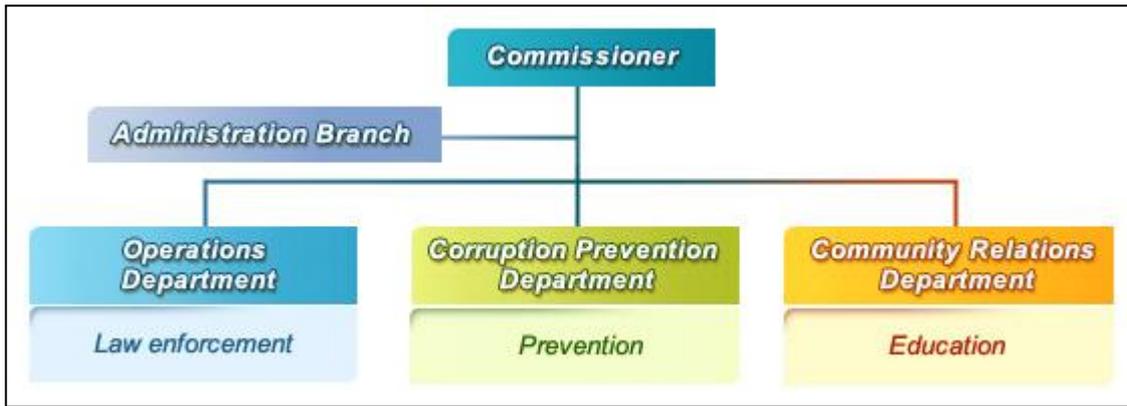
To draw lessons from the Hong Kong experience; it is important to understand the organisation and structure of the ICAC.

IV. Three pillar approach

The ICAC follows a three pillar approach containing deterrence/investigation/law enforcement, prevention and education.

³³ Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, http://www.basiclaw.gov.hk/en/basiclawtext/chapter_4.html retrieved on 26.01.2017

³⁴ ICAC Ordinance [http://www.legislation.gov.hk/blis_pdf.nsf/6799165D2FEE3FA94825755E0033E532/A3E9ED78744D8631482575EE004CB37D/\\$FILE/CAP_204_e_b5.pdf](http://www.legislation.gov.hk/blis_pdf.nsf/6799165D2FEE3FA94825755E0033E532/A3E9ED78744D8631482575EE004CB37D/$FILE/CAP_204_e_b5.pdf) retrieved on 26.01.2017



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All three pillars are regarded as equally important but most of the resources (70%) are spent on the *law enforcement* branch because prevention and education according to the ICAC can only succeed if the public believes in the effective combating of corruption and if general deterrence is reached and if corrupt officials are taken out of office. Every corruption suspect the ICAC gets to know of is investigated. There are different ways to report corruption, e.g. a 24/7 working “Report Corruption hotline”.³⁶

The ICAC has a wide range of instruments to investigate corrupt activities, e.g. the power to check bank accounts and the power to search, arrest and detain.³⁷

Public education is crucial to change the public consciousness. Only if there is a public feeling that corruption is not a trivial offence, a public reaction to corruption on higher political levels can be reached and there is a chance that eventually parties with corrupt leaders are not elected anymore.

The public education strategies include:

- collaboration with the media to ensure that successful cases are publicized so as to effect deterrence and enhance public consciousness;
- school ethics education programmes;
- publication of corruption prevention guidelines.

The *prevention department* focuses on finding and reducing corruption opportunities in public procurement and on creating best practices to prevent corruption such as a job rotation

³⁵ http://www.icac.org.hk/en/about_icac/os/index.html retrieved on 26.01.2017

³⁶ Kwok Manwai, Comprehensive & Effective Approach to Anti-Corruption. The Hong Kong ICAC Experience, with a View on New Approaches in the Fight Against Corruption, http://www.kwok-manwai.com/articles/Comprehensive_Effective.html retrieved on 24.01.2017; http://www.icac.org.hk/en/law_enforcement/acl/index.html retrieved on 26.01.2017

³⁷ http://www.icac.org.hk/en/law_enforcement/acl/icaco/index.html retrieved on 26.01.2017

policy, and a surprise check system for civil servants. Furthermore, it gives advice to private companies.³⁸

The work of the ICAC shows that for the effective combating of corruption it is important to address both the symptoms and the root cause of corruption.

Furthermore the ICAC has specialised units such as witness protection, computer forensic and financial investigation.³⁹

V. Checks and Balances

The ICAC is organised in a “*robust system of checks and balances*”⁴⁰ to avoid abuse. The following are the most important components:

Separate Power of Prosecution:

- The power to prosecute is vested with the Secretary for Justice, and the separation of powers ensures that no case is brought to the courts solely on the judgement of the ICAC.
- Advisory Committees comprising members of the civil society that oversee the work of the ICAC, e.g. the Operations Review Committee that reviews the reports of the ICAC and operates as a watchdog on the ICAC.
- An Independent ICAC Complaints Committee that has the task to monitor and review complaints against the ICAC or its staff.
- Internal Monitoring: the ICAC has an internal investigation and monitoring unit, L Group that has been established to investigate all allegations of corruption and related offences made against the ICAC staff.

What can be seen as problematic, however, is that the members both of the Advisory Committees and of the Complaints Committee are appointed by the Chief Executive.⁴¹

³⁸ Kwok Manwai, Comprehensive & Effective Approach to Anti-Corruption. The Hong Kong ICAC Experience, with a View on New Approaches in the Fight Against Corruption, http://www.kwok-manwai.com/articles/Comprehensive_Effective.html retrieved on 24.01. 2017; http://www.icac.org.hk/en/about_icac/os/index.html retrieved on 26.01.2017; China Morning post, 15.01.2014, Forty years since its creation, how the ICAC cleaned up corruption in Hong Kong, <http://www.scmp.com/news/hong-kong/article/1428093/forty-years-its-creation-how-icac-cleaned-corruption-hong-kong> retrieved on 26.01.2017

³⁹ Kwok Manwai, Comprehensive & Effective Approach to Anti-Corruption. The Hong Kong ICAC Experience, with a View on New Approaches in the Fight Against Corruption, http://www.kwok-manwai.com/articles/Comprehensive_Effective.html retrieved on 24.01.2017

⁴⁰ http://www.icac.org.hk/en/checks_and_balances/bf/index.html retrieved on 26.01.2017

⁴¹ http://www.icac.org.hk/en/checks_and_balances/bf/index.html retrieved on 26.01.2017, Kwok Manwai, Comprehensive & Effective Approach to Anti-Corruption. The Hong Kong ICAC Experience, with a View on

VI. Fulfilment of the STIRS criteria

The ICAC fulfils the STIRS criteria to quite a good extent.

The ICAC deals exclusively with the crime of corruption and is therefore *specialised* and able to examine the phenomenon from all necessary points of view.

Regarding the *resources* the ICAC is granted with a fixed percentage of the government budget (0,3 %).⁴²

The staff members of the ICAC are well *trained* experts from different disciplines, such as professional investigators, intelligence experts, technical experts, accountants, lawyers, educational and ethics experts.⁴³

The ICAC's *independence* is constitutionally guaranteed. On the other hand the fact that the Basic Law stipulates that the ICAC is accountable to the Chief Executive and that the Commissioner is nominated by the Chief Executive endangers the independence of the Commission and should be reviewed to avoid undue interference.⁴⁴

The ICAC officials enjoy *security of tenure of office*.⁴⁵

New Approaches in the Fight Against Corruption, http://www.kwok-manwai.com/articles/Comprehensive_Effective.html retrieved on 24.01.2017

⁴² Kwok Manwai, Comprehensive & Effective Approach to Anti-Corruption. The Hong Kong ICAC Experience, with a View on New Approaches in the Fight Against Corruption, http://www.kwok-manwai.com/articles/Comprehensive_Effective.html retrieved on 24.01.2017

⁴³ Kwok Manwai, Comprehensive & Effective Approach to Anti-Corruption. The Hong Kong ICAC Experience, with a View on New Approaches in the Fight Against Corruption, http://www.kwok-manwai.com/articles/Comprehensive_Effective.html retrieved on 24.01.2017

⁴⁴ Bertrand de Speville, ICAC No Exception For Change, 14.08.2016, <http://www.vohk.hk/2016/08/14/icac-no-exception-for-change/> retrieved on 13.01.2017

⁴⁵ Keynote Address by the Hon. Mr Justice Fok PJ

ICAC Symposium, 11-13 May 2015: "A Future Without Corruption – One Vision, Multiple Strategies", 11.05.2015: "The importance of the rule of law to a corruption-free future"
<http://www.hkcfa.hk/filemanager/speech/en/upload/129/A%20Future%20Without%20Corruption%20%E2%80%93%20One%20Vision,%20Multiple%20Strategies.pdf> retrieved on 26.01.2017

B. Singapore

With regard to corruption Singapore is one of the cleanest countries in the world and the cleanest country in Asia. It has been ranked the seventh least corrupt country of 176 countries in the world by Transparency International.⁴⁶ Singapore is the second best economy to do business according to the World Economic Forum's indices of 2015/16 and 2016/17.⁴⁷

In a lot of countries that are worse according to the "World Economic Forum's Global Competiveness Report" corruption is one of most problematic factors for doing business (e.g. 12, 3 % of the respondents saw corruption as the most problematic factor for doing business in South Africa, that has been ranked 47th best economy in the world, whereas this factor is seen problematic only by 0,1 % of the respondents in Singapore that has been ranked the 2nd best economy in the world).⁴⁸

I. History

Singapore has the world's oldest anti-corruption agency established in 1952 by the British colonial government, named Corrupt Practices Investigation Bureau (CPIB).⁴⁹

When Singapore became independent in 1959 corruption was not sizable but Singapore was not graft-free since the powers of the CPIB were quite limited at that time.⁵⁰

II. Four-Pillar-Approach and other remedies to combat corruption in Singapore

Singapore follows a four-pillar-zero-tolerance-for-corruption-approach

⁴⁶ <https://www.transparency.org/country/SGP> retrieved on 30.01.2017

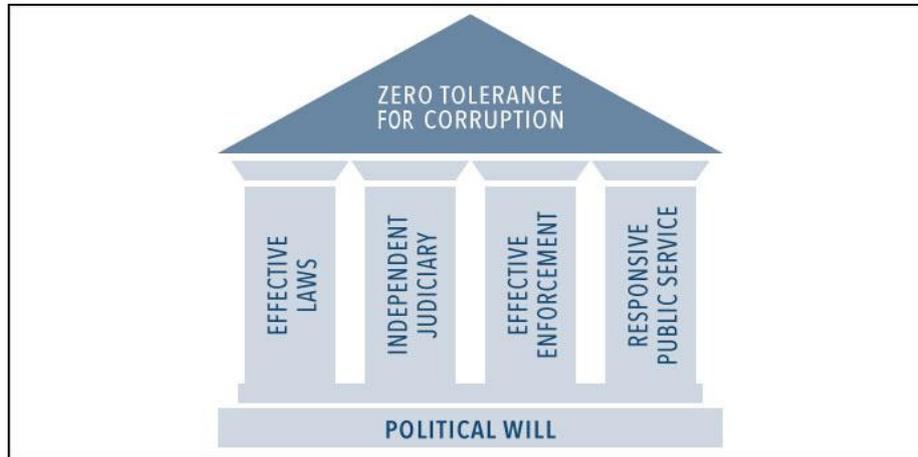
⁴⁷ Jonathan Webb, Singapore Is The Least Corrupt Country In Asia, But Standards Drop When It Trades Abroad, January, 28th 2016, <http://www.forbes.com/sites/jwebb/2016/01/28/singapore-is-the-least-corrupt-country-in-asia-but-standards-drop-when-its-businesses-trade-abroad/#eeb231a57af7> retrieved on 01.02.2017, World Economic Forum, Global Competiveness Report 2016/17; [www3.weforum.org/...2017/05FullReport/TheGlobalCompetitivenessReport 2016-2017](http://www3.weforum.org/...2017/05FullReport/TheGlobalCompetitivenessReport%202016-2017) retrieved on 01.02.2017

⁴⁸ World Economic Forum, Global Competiveness Report 2016/17 [www3.weforum.org/...2017/05FullReport/TheGlobalCompetitivenessReport 2016-2017](http://www3.weforum.org/...2017/05FullReport/TheGlobalCompetitivenessReport%202016-2017) retrieved on 01.02.2017

⁴⁹ <https://www.cpi.gov.sg/about-cpi/mission-vision-core-values> retrieved on 31.01.2017

⁵⁰ Joshua Berlinger, Why China Should Study Singapore's Anti-Corruption Strategy, 06.12.2012, <http://www.businessinsider.com/why-china-should-study-singapores-anti-corruption-strategy-2012-12> retrieved on 01.02.2017

Koh Teck Hin, Corruption Control in Singapore, http://www.unafei.or.jp/english/pdf/RS_No83/No83_17VE_Koh1.pdf retrieved on 31.01.2017



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III. Effective Laws / Legal Framework

According to Singapore’s four-pillar-approach, effective laws are the first step to effectively combat corruption.

The “Prevention of Corruption Act” (PCA), was enacted in June 1960. It is the primary anti-corruption law in Singapore.⁵² It replaced the previous Prevention of Corruption Ordinance, giving the CPIB more powers.⁵³

The most important regulations within the PCA are:

The PCA under Chapter III (Offences and penalties) stipulates the following:

“Punishment for corruption

5. Any person who shall by himself or by or in conjunction with any other person —
- (a) corruptly solicit or receive, or agree to receive for himself, or for any other person; or
 - (b) corruptly give, promise or offer to any person whether for the benefit of that person or of another person, any gratification as an inducement to or reward for, or otherwise on account of—
- (i) any person doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed; or
 - (ii) any member, officer or servant of a public body doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which such

⁵¹ <https://www.cpi.gov.sg/about-corruption/corruption-control-framework> retrieved on 31.01. 2017

⁵² <https://www.cpi.gov.sg/about-corruption/prevention-of-corruption-act> retrieved on 31.01.2017

⁵³ Koh Teck Hin, Corruption Control in Singapore http://www.unafei.or.jp/english/pdf/RS_No83/No83_17VE_Koh1.pdf retrieved on 31.01.2017

*public body is concerned, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 5 years or to both.*⁵⁴

An important asset of the PCA is the presumption clause that reverses the burden of proof to the suspect.⁵⁵

THE PCA under Part III contains the following passage:

“Presumption of corruption in certain cases

*8. Where in any proceedings against a person for an offence under section 5 or 6, it is proved that any gratification has been paid or given to or received by a person in the employment of the Government or any department thereof or of a public body by or from a person or agent of a person who has or seeks to have any dealing with the Government or any department thereof or any public body, that gratification shall be deemed to have been paid or given and received corruptly as an inducement or reward as hereinbefore mentioned unless the contrary is proved.*⁵⁶

The PCA allows the CPBI to investigate in both the public and the private sector.⁵⁷

Furthermore, the PCA under Part III (Offences and Penalties) stipulates the following:

“When penalty to be imposed in addition to other punishment

13.—(1) Where a court convicts any person of an offence committed by the acceptance of any gratification in contravention of any provision of this Act, then, if that gratification is a sum of money or if the value of that gratification can be assessed, the court shall, in addition to imposing on that person any other punishment, order him to pay as a penalty, within such time as may be specified in the order, a sum which is equal to the amount of that gratification

⁵⁴ Prevention of Corruption Act Singapore
<http://statutes.agc.gov.sg/aol/search/display/view.w3p;ident=ca83fcad-3903-4a8a-a53f-93ae7c167568;page=0;query=DocId%3A%22ba9a8115-fb33-4254-8070-7b618d4fd8d1%22%20Status%3Ainforce%20Depth%3A0;rec=0#legis> retrieved on 31.01.2017

⁵⁵ U 4 Expert Answer, International good practice in anti-corruption legislation
<http://www.u4.no/publications/international-good-practice-in-anti-corruption-legislation> retrieved on 31.01.2017

⁵⁶ Prevention of Corruption Act Singapore,
<http://statutes.agc.gov.sg/aol/search/display/view.w3p;ident=ca83fcad-3903-4a8a-a53f-93ae7c167568;page=0;query=DocId%3A%22ba9a8115-fb33-4254-8070-7b618d4fd8d1%22%20Status%3Ainforce%20Depth%3A0;rec=0#legis> retrieved on January 31.01.2017

⁵⁷ Koh Teck Hin, Corruption Control in Singapore,
http://www.unafei.or.jp/english/pdf/RS_No83/No83_17VE_Koh1.pdf retrieved on 31.01.2017

or is, in the opinion of the court, the value of that gratification, and any such penalty shall be recoverable as a fine.”⁵⁸

This rule is necessary to ensure that the offender does not enjoy any benefit from any corrupt activity.⁵⁹

Through the “Corruption, Drug Trafficking and other Serious Crimes (Confiscation of Benefits) Act” (CDSA), enacted in 1999, the confiscation of benefits from corrupt activities is ensured.

Active and passive bribery of members of parliament has been penalized in Singapore in Section 161 to 165 of the Penal Code.⁶⁰

IV. Effective Enforcement

Effective laws without and effective enforcement are like having a “*good battle plan but poor troops*”⁶¹ as Koh Teck Hin, the Deputy Director of the Corrupt Practices Investigation Bureau (CPIB) was pointed out.

The CPIB is the only entity in Singapore that deals with corruption offences. It has a wide range of investigative powers and any matter that regards corruptive activities has to be handed over to the CPIB.⁶²

The *specialisation* of the law enforcement agency dealing with corruption is thereby ensured in Singapore.

⁵⁸ Prevention of Corruption Act Singapore,
<http://statutes.agc.gov.sg/aol/search/display/view.w3p;ident=ca83fcad-3903-4a8a-a53f-93ae7c167568;page=0;query=DocId%3A%22ba9a8115-fb33-4254-8070-7b618d4fd8d1%22%20Status%3Ainforce%20Depth%3A0;rec=0#legis> retrieved on 31.01.2017

⁵⁹ Koh Teck Hin, Corruption Control in Singapore
http://www.unafei.or.jp/english/pdf/RS_No83/No83_17VE_Koh1.pdf retrieved on 31.01.2017

⁶⁰ ADB/OECD Anti-Corruption Initiative for Asia and the Pacific, The Secretariat, Anti-Corruption Policies in Asia and the Pacific, The Legal and Institutional Framework for Fighting Corruption in Twenty-one Asian and Pacific Countries, <https://www.oecd.org/site/adboecdanti-corruptioninitiative/policyanalysis/35022355.pdf> retrieved on 01.02.2017

Penal Code Singapore,
<http://statutes.agc.gov.sg/aol/search/display/view.w3p;page=0;query=DocId%3A%22025e7646-947b-462c-b557-60aa55dc7b42%22%20Status%3Ainforce%20Depth%3A0;rec=0> retrieved on 01.02.2017

⁶¹ Koh Teck Hin, Corruption Control in Singapore,
http://www.unafei.or.jp/english/pdf/RS_No83/No83_17VE_Koh1.pdf retrieved on 31.01.2017

⁶² Koh Teck Hin, Corruption Control in Singapore,
http://www.unafei.or.jp/english/pdf/RS_No83/No83_17VE_Koh1.pdf retrieved on 31.01.2017

The *independence* of the CPIB with regard to interference through the government is ensured through the following constitutional regulation:

“Concurrence of President for certain investigations

*22G. Notwithstanding that the Prime Minister has refused to give his consent to the Director of the Corrupt Practices Investigation Bureau to make any inquiries or to carry out any investigations into any information received by the Director touching upon the conduct of any person or any allegation or complaint made against any person, the Director may make such inquiries or carry out investigations into such information, allegation or complaint if the President, acting in his discretion, concurs therewith.”*⁶³

There is no overarching whistleblowing legislation in Singapore.⁶⁴

The PCA in Section 36 affords anonymity to whistleblowers with certain exceptions:

“Protection of informers

36.—(1) Except as hereinafter provided, no complaints as to an offence under this Act shall be admitted in evidence in any civil or criminal proceeding whatsoever, and no witness shall be obliged or permitted to disclose the name or address of any informer, or state any matter which might lead to his discovery.

(2) If any books, documents or papers which are in evidence or liable to inspection in any civil or criminal proceeding whatsoever contain any entry in which any informer is named or described or which might lead to his discovery, the court before which the proceeding is had shall cause all such passages to be concealed from view or to be obliterated so far as is necessary to protect the informer from discovery, but no further.

*(3) If on a trial for any offence under this Act the court, after full inquiry into the case, is of the opinion that the informer wilfully made in his complaint a material statement which he knew or believed to be false or did not believe to be true, or if in any other proceeding the court is of the opinion that justice cannot be fully done between the parties thereto without the discovery of the informer, the court may require the production of the original complaint, if in writing, and permit inquiry and require full disclosure concerning the informer.”*⁶⁵

⁶³ Constitution of the Republic of Singapore, <http://statutes.agc.gov.sg/aol/search/display/view.w3p;page=0;query=DocId%3A%22cf2412ff-fca5-4a64-a8ef-b95b8987728e%22%20Status%3Ainforce%20Depth%3A0;rec=0> retrieved on 31.01.2017

⁶⁴ Norton Rose Fulbright, Business ethics and anti-corruption laws: Singapore. <http://www.nortonrosefulbright.com/knowledge/publications/121084/business-ethics-and-anti-corruption-laws-singapore> retrieved on 01.02.2017

⁶⁵ Prevention of Corruption Act Singapore, <http://statutes.agc.gov.sg/aol/search/display/view.w3p;ident=ca83fcad-3903-4a8a-a53f->

Singapore has established a reporting mechanism that imposes an obligation on financial organizations to declare suspicious transactions.⁶⁶

V. Independent and effective Judiciary

As in Hong Kong also in Singapore effective detection, investigation and adjudication are seen as the main remedy to reach general deterrence. The law suits dealing with corruption are transparent and all court proceedings are open.

There have been a lot of precedents in recent years that showed that the PCA is implemented independently and effectively by the judges.⁶⁷

VI. Effective Administration and good governance

As the Deputy Director of the CDSA says *“improvements in efficiency and effectiveness in public service delivery can act against corruption and reduce its opportunities”*.⁶⁸

VII. Political will

Singapore explicitly focuses on the necessity of a strong political will for the effective fight against corruption.⁶⁹ *“It provides the soil and the nutrient which allows the seed of anti-corruption work to germinate and grow.”*⁷⁰

[93ae7c167568;page=0;query=DocId%3A%22ba9a8115-fb33-4254-8070-7b618d4fd8d1%22%20Status%3Ainforce%20Depth%3A0;rec=0#legis](https://www.unafei.or.jp/english/pdf/RS_No83/No83_17VE_Koh1.pdf) retrieved on 31.01.2017

⁶⁶ ADB/OECD Anti-Corruption Initiative for Asia and the Pacific, The Secretariat, Anti-Corruption Policies in Asia and the Pacific, The Legal and Institutional Framework for Fighting Corruption in Twenty-one Asian and Pacific Countries, <https://www.oecd.org/site/adboecdanti-corruptioninitiative/policyanalysis/35022355.pdf> retrieved on 01.02.2017

⁶⁷ Koh Teck Hin, Corruption Control in Singapore, http://www.unafei.or.jp/english/pdf/RS_No83/No83_17VE_Koh1.pdf retrieved on 31.01.2017

⁶⁸ Koh Teck Hin, Corruption Control in Singapore, http://www.unafei.or.jp/english/pdf/RS_No83/No83_17VE_Koh1.pdf . retrieved on 31.01.2017

⁶⁹ Joshua Berlinger, Why China Should Study Singapore's Anti-Corruption Strategy, 06.12.2012, <http://www.businessinsider.com/why-china-should-study-singapores-anti-corruption-strategy-2012-12> retrieved on 01.02.2017

⁷⁰ Koh Teck Hin, Corruption Control in Singapore, http://www.unafei.or.jp/english/pdf/RS_No83/No83_17VE_Koh1.pdf retrieved on 31.01.2017

Singapore's efforts to reach a functioning and transparent public procurement system seem to be very successful.

Singapore has been ranked 1st of 138 countries with regard to “public trust in politicians”, “Favouritism in decisions of government officials”, “Efficiency of legal framework in settling disputes” and “Transparency of government policymaking” in the World Economic Forum's Global Competitiveness Report 2016/17.

VIII. Prevention

As in Hong Kong, also in Singapore preventive measures are taken to avoid corruption.

The Government Instruction Manual contains preventive regulations to avoid incentives of corruption, e.g. it prohibits public officers from borrowing money from any person, who has official dealings with him or her and it obliges public officers to declare their assets at their first appointment and annually.⁷¹

Singapore also has a routine rotation policy of public officials.⁷²

However, it seems that Singapore in its four pillar approach strategy gives less importance than Hong Kong to prevention and education.

⁷¹ John Kpundeh, *Curbing Corruption: Toward a Model for Building National Integrity*, p. 62; Presentation By Mr. Lim Siong Guan, Permanent Secretary, Prime Minister's Office Singapore at the Seminar on Hong Kong into the 21st Century – Maintaining integrity in the civil service, <https://www.cpiib.gov.sg/press-room/speeches/presentation-mr-lim-siong-guan-permanent-secretary-prime-minister%E2%80%99s-office> retrieved on 01.02.2017

⁷² ADB/OECD Anti-Corruption Initiative for Asia and the Pacific, The Secretariat, *Anti-Corruption Policies in Asia and the Pacific, The Legal and Institutional Framework for Fighting Corruption in Twenty-one Asian and Pacific Countries*, <https://www.oecd.org/site/adboecdanti-corruptioninitiative/policyanalysis/35022355.pdf> retrieved on 01.02.2017

IX. Organisation / Structure



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The CPIB has 3 main departments: investigations, operations, and corporate affairs.

The four investigation branches are *specialised* in different areas. The operations department supports the investigations department e.g. in gathering and collating intelligence.⁷⁴

C. III. India

As a BRICS country India ranks 79th in Transparency International's 2016 Corruption Perceptions Index, whereas South Africa ranks 64th and is thereby the least corrupt BRICS Country according to this index.⁷⁵

I. Current situation/ Forms of corruption in India

Corruption is a widespread phenomenon in India's everyday life.

⁷³ <https://www.cpi.gov.sg/about-us/our-work/organisational-structure> retrieved on 31.01.2017

⁷⁴ <https://www.cpi.gov.sg/about-us/our-work/organisational-structure> retrieved on 01.02.2017

⁷⁵ Transparency International, Corruption Perceptions Index 2016, http://www.transparency.org/news/feature/corruption_Perceptions_index_2016/#table retrieved on 01.02.2017

According to Transparency International's Global Corruption Barometer 2013 India is amongst the countries in which over 50 % of the people have admitted that they paid bribes to obtain basic civil services in the preceding year.⁷⁶

A Freedom House 2015 report comes to the conclusion that corruption is entrenched in the law enforcement system in India. It says that citizens frequently face substantial obstacles, including demands for bribes, when they ask the police for basic services.⁷⁷

Corruption has been rated the second most problematic factor for doing business of 10, 9 % of the respondents in a survey shown in World Economic Forum's Global Competitiveness Report 2016 that already has been referred to above.⁷⁸

In India both bureaucratic and political corruption are rampant. Nepotism is embedded in the civil service and many corruption scandals have occurred in the last decade, e.g. members of parliament that accepted cash for raising specific questions and for giving votes to save the government's power. The police force in India is affected intensely by corruption which has a large undermining impact on the government's anti-corruption efforts.⁷⁹

The judiciary in India is quite ineffective. In recent years some judges have initiated contempt-of-court cases against activists and journalists who expose judicial corruption or question verdicts. Political interferences can therefore not be neglected.⁸⁰

II. Legal Framework

There are several regulatory instruments dealing with corruption in India.

The 1988 "Prevention of Corruption Act" criminalises active and passive bribery in the public and in the private sector.

⁷⁶ Transparency International, Global Corruption Barometer 2013, <https://www.transparency.org/gcb2013/report> retrieved on 01.02.2017

⁷⁷ <https://freedomhouse.org/report/freedom-world/2015/india> retrieved on 02.02.2017

⁷⁸ World Economic Forum, Global Competitiveness Report 2016/17, www3.weforum.org/...2017/05FullReport/TheGlobalCompetitivenessReport2016-2017 retrieved on 01.02.2017

⁷⁹ Beina Xu, Governance in India: Corruption, 04.09. 2017, <http://www.cfr.org/corruption-and-bribery/governance-india-corruption/p31823> retrieved on 24.02.2017; Marie Chene, U4 Expert Answer, Overview of Corruption and Anti-Corruption efforts in India, <http://www.u4.no/publications/pakistan-overview-of-corruption-and-anti-corruption-efforts/downloadasset/3927> retrieved on 02.02.2017; https://www.transparency.org/news/feature/asia_pacific_fighting_corruption_is_side_lined retrieved on 24.02.2017

⁸⁰ Marie Chene, U4 Expert Answer, Overview of Corruption and Anti-Corruption efforts in India, <http://www.u4.no/publications/pakistan-overview-of-corruption-and-anti-corruption-efforts/downloadasset/3927> retrieved on February 2nd, 2017; <https://freedomhouse.org/report/freedom-world/2015/india> retrieved on 02.02.2017

Furthermore, India has a “Prevention of Money Laundering Act”, established in 2002.⁸¹

The 2005 “Right to Information Act” is crucial for fighting corruption in India.

It stipulates in Chapter II, section 4, that any citizen may request information from public authorities and in section 7 that they generally have to respond to the request within 30 days.⁸²

However, according to Freedom House since 2008 at least 29 right to information activists have been murdered and 164 have been assaulted or harassed.⁸³

For a long time there was no whistleblower protection law in India.

The Public Interest Disclosure Resolution (PIDR) had authorised the Central Vigilance Commission (CVC) to protect Whistle-blowers, however.

The protection of whistleblowers was also guaranteed in the online complaint system of the Central Bureau of Investigation (CBI). However, there had been at least 30 whistleblowers harassed in spite the confidentiality of the complaint system.^{84 85}

The Whistleblower Protection Act has been enacted in 2014 as a crucial remedy for fighting corruption.⁸⁶

III. Institutions

There are various bodies in India that deal with the implementation of the anti-corruption rules.

⁸¹ Marie Chene, U4 Expert Answer, Overview of Corruption and Anti-Corruption efforts in India, <http://www.u4.no/publications/pakistan-overview-of-corruption-and-anti-corruption-efforts/downloadasset/3927> retrieved on 02.02.2017; <https://freedomhouse.org/report/freedom-world/2015/india> retrieved on 02.02.2017

⁸² Right to Information Act India 2005, <http://rti.gov.in/webactrti.htm> retrieved on 13.02.2017

⁸³ <https://freedomhouse.org/report/freedom-world/2015/india> retrieved on 02.02.2017

⁸⁴ C. Raj Kumar, Corruption in India: A Violation of Human Rights, Promoting Transparency and the Right to Good Governance, 2015, p. 749, 750 https://lawreview.law.ucdavis.edu/issues/49/2/Symposium/49-2_Kumar.pdf retrieved on 01.02.2017

⁸⁵ Marie Chene, U4 Expert Answer, Overview of Corruption and Anti-Corruption efforts in India, <http://www.u4.no/publications/pakistan-overview-of-corruption-and-anti-corruption-efforts/downloadasset/3927> retrieved on 02.02.2017

⁸⁶ Raj Kumar, Corruption in India: A Violation of Human Rights, Promoting Transparency and the Right to Good Governance, 2015, p. 750 https://lawreview.law.ucdavis.edu/issues/49/2/Symposium/49-2_Kumar.pdf retrieved on 01.02.2017; <http://www.prsindia.org/billtrack/the-whistle-blowers-protection-amendment-bill-2015-3784> retrieved on 02.02.2017

The Central Bureau of Investigation (CBI) has been established in 1963. It is placed under the Ministry of Personnel, Pensions & Grievances and is therefore not *independent*.

It consists of three divisions, of which one is the Anti-Corruption-Division so that there is a lack of *specialisation*.⁸⁷

The Central Vigilance Commission (CVC), established in 1964, is mandated to investigate high level public sector corruption at the federal level and it has supervisory powers over the CBI.

The Chief Information Commission, established in 2005 gives shape to the 2005 Right to Information Act.

The Office of the Comptroller and Auditor General publishes several integrity reports on state departments.⁸⁸

IV. What are the reasons for the anti-corruption framework not working in India?

The legal framework in India per se meets a lot of the criteria requested by the United Nations Convention against Corruption. But why is corruption then so rampant and endemic in India? As the overview of India's anti-corruption entities shows, there are various bodies in India that have the task to implement anti-corruption-laws without a clear division of powers amongst the bodies.

This leads to a lack of specialisation and creates overlaps or gaps because it is probable that no one feels responsible, when the division of tasks is not clear.

It is obvious that the CBI cannot deal with corruption from all necessary points of view including preventive and educational aspects, as the anti-corruption division is only one of three divisions in this agency and there are other agencies dealing with corrupt activities in the country at the same time.

For this reason Professor C. Raj Kumar, the Dean of the Jindal Global Law School and the Vice Chancellor of O.P. Jindal Global University, in his work "Corruption in India: A

⁸⁷ <http://cbi.gov.in/history.php> retrieved on 02.02.2017; Marie Chene, U4 Expert Answer, Overview of Corruption and Anti-Corruption efforts in India, <http://www.u4.no/publications/pakistan-overview-of-corruption-and-anti-corruption-efforts/downloadasset/3927> retrieved on 02.02.2017; Raj Kumar, Corruption in India: A Violation of Human Rights, Promoting Transparency and the Right to Good Governance, 2015, p. 748 https://lawreview.law.ucdavis.edu/issues/49/2/Symposium/49-2_Kumar.pdf retrieved on 01.02.2017

⁸⁸ Marie Chene, U4 Expert Answer, Overview of Corruption and Anti-Corruption efforts in India, <http://www.u4.no/publications/pakistan-overview-of-corruption-and-anti-corruption-efforts/downloadasset/3927> retrieved on 02.02.2017

Violation of Human Rights, Promoting Transparency and the Right to Good Governance” proposes the establishment of an Independent Commission Against Corruption.⁸⁹

However, the institutional system and the lack of enforcement is not the only reason for the huge gap between anti-corruption policies and practices in India.

Professor Raj Kumar in his work stipulates that “*absence of political will and sincerity in taking concrete steps to eliminate corruption*” is at least of the same importance. He says that the focus should not only be on the law enforcement through a juridical system that is corrupt itself and therefore does not work, but that the problem of corruption should be seen from a fundamental, human rights point of view with the focus on transparency and accountability.⁹⁰

He therefore suggests a rights-based approach rather than a policy based approach, so that there is a “rights-bearer” and a “duty-holder” that can be made responsible.

He suggests establishing a fundamental right to corruption-free service.⁹¹

Zimbabwe

I. Overview/ Current situation

Corruption has a long history in Zimbabwe with such major corruption cases as the Paweni and Willowvale scandals being traceable back to 1982 and 1988. While public and private sector corruption has been more systemic in its progression over many years, it has been more amorphous in society. As a matter of fact, today, corruption is becoming accepted as the way things are done in all sectors.⁹²

Since the country gained independence in 1980, Zimbabwe has gradually transformed into a dominant-party state characterised by the increasing concentration of powers in the presidency.⁹³

⁸⁹ C. Raj Kumar, Corruption in India: A Violation of Human Rights, Promoting Transparency and the Right to Good Governance, 2015, p. 744, 753 https://lawreview.law.ucdavis.edu/issues/49/2/Symposium/49-2_Kumar.pdf retrieved on 01.02. 2017

⁹⁰ C. Raj Kumar, Corruption in India: A Violation of Human Rights, Promoting Transparency and the Right to Good Governance, 2015, p. 743, 744, https://lawreview.law.ucdavis.edu/issues/49/2/Symposium/49-2_Kumar.pdf retrieved on 01.02 2017

⁹¹ C. Raj Kumar, Corruption in India: A Violation of Human Rights, Promoting Transparency and the Right to Good Governance, 2015, p. 745,f., https://lawreview.law.ucdavis.edu/issues/49/2/Symposium/49-2_Kumar.pdf retrieved on 01.02.2017

⁹² U4 Expert Answer, Zimbabwe: Overview of corruption and anti-corruption retrieved on 30.01.2017 <http://www.u4.no/publications/zimbabwe-overview-of-corruption-and-anti-corruption/downloadasset/3791>

⁹³ U4 Expert Answer, Zimbabwe: Overview of corruption and anti-corruption retrieved on 30.01.2017 <http://www.u4.no/publications/zimbabwe-overview-of-corruption-and-anti-corruption/downloadasset/3791>;

At present Zimbabwe is among the most corrupt countries in Southern Africa with a low Corruption Perception Index score of 22⁹⁴. Therefore corruption in Zimbabwe is a topical developmental, political and economic governance issue, taking a variety of forms and involving high level officials.

The country also performs extremely poorly in all six governance areas assessed by the 2013 World Bank worldwide governance indicators, scoring 2.87 (on a 0 to 100 scale) in terms of freedom from corruption; 2.37 in terms of rule of law; 2.39 in terms of regulatory quality; 12.92 in terms of government effectiveness; 9.95 in terms of voice and accountability; and 24.17 in terms of political stability and absence of violence.⁹⁵

The majority of corruption offenders in Zimbabwe are political actors with political backing and influence.⁹⁶ Most of them hold powerful positions both in government and in their political parties. Hence there is a lack of political will to reduce corruption as it is mainly located in the political culture of Zimbabwe.⁹⁷ Furthermore as a matter of fact those wielding political power don't demonstrate any commitment to curb political corruption since their continued stay in power is mutually dependent on the manifestation of it.

At the same time high impunity makes the fight against corruption difficult in Zimbabwe. In most of the corruption scandals cases the perpetrators aren't prosecuted. Moreover the President even pardoned some of the offenders of the Willowvale scandals of 1988. Consequently corruption involving the political elite is not considered a crime in the eyes of political actors.

Bertelsmann Stiftung BTI 2016 Zimbabwe Country Report retrieved on 31.01.2017
https://webcache.googleusercontent.com/search?q=cache:FzbLh7AgjBwJ:https://www.bti-project.org/fileadmin/files/BTI/Downloads/Reports/2016/pdf/BTI_2016_Zimbabwe.pdf+&cd=3&hl=de&ct=clnk&client=firefox-b-ab

⁹⁴ <https://www.transparency.org/country/ZWE>

⁹⁵ U4 Expert Answer, Zimbabwe: Overview of corruption and anti-corruption retrieved 30.01.2017
<http://www.u4.no/publications/zimbabwe-overview-of-corruption-and-anti-corruption/downloadasset/3791>

⁹⁶ U4 Expert Answer, Zimbabwe: Overview of corruption and anti-corruption retrieved on 30.01. 2017
<http://www.u4.no/publications/zimbabwe-overview-of-corruption-and-anti-corruption/downloadasset/3791>

⁹⁷ U4 Expert Answer, Zimbabwe: Overview of corruption and anti-corruption retrieved on 30.01.2017
<http://www.u4.no/publications/zimbabwe-overview-of-corruption-and-anti-corruption/downloadasset/3791>

Also the independence of the judiciary is meanwhile compromised by its engagement with politicians.⁹⁸ Thus fear of convictions lost any deterrent effect on the offenders and an environment where those with money and power or access to power go unpunished has been created.

II. Governance structures and anti-corruption efforts

In Zimbabwe, in spite of existing anti corruption legislation, the legal environment is generally not supportive and corruption cases are often not pursued by the police.⁹⁹

III. Legal Framework

Zimbabwe has a relatively strong legal framework, as assessed by Global Integrity in 2011.¹⁰⁰ In 2005 the Zimbabwe Anti Corruption Commission was established as well as the National Prosecuting Authority. The Constitution also sets forth responsibilities for public officers and civil service conduct but a whistleblowing protection law does not exist.¹⁰¹

Zimbabwe signed the United Nations Convention against Corruption on 20 February 2004 and ratified it on 8 March 2007.¹⁰² The country is also a signatory to the SADC Protocol as well as the African Union Convention on Combating Corruption.

IV. The Zimbabwe Anti-Corruption-Commission (ZACC)

The institutions most relevant to the fight against corruption in Zimbabwe are the Anti-Corruption Commission (ZACC), the Department of Anti-Corruption and Anti-Monopolies in

⁹⁸ GAN Business Anti Corruption Portal, *Zimbabwe Corruption Report* retrieved on 03.02.2017
<http://www.business-anti-corruption.com/country-profiles/zimbabwe>

⁹⁹ U4 Expert Answer, Zimbabwe: Overview of corruption and anti-corruption retrieved on 30.01. 2017
<http://www.u4.no/publications/zimbabwe-overview-of-corruption-and-anti-corruption/downloadasset/3791>

¹⁰⁰ Global integrity report 2011: *Zimbabwe* retrieved on 03.02.2017
<https://www.globalintegrity.org/research/reports/global-integrity-report/global-integrity-report-2011/gir-scorecard-2011-zimbabwe/>

¹⁰¹ U4 Expert Answer, Zimbabwe: Overview of corruption and anti-corruption retrieved on 30.01.2017
<http://www.u4.no/publications/zimbabwe-overview-of-corruption-and-anti-corruption/downloadasset/3791>

Conference of the States Parties to the united Nations Convention: *Executive summary Zimbabwe* retrieved the 03.02.2017 <http://uncaccoalition.org/files/official-documents/executive-summary-zimbabwe.pdf>

¹⁰² Conference of the States Parties to the united Nations Convention: *Executive summary Zimbabwe* retrieved on 03.02. 2017 <http://uncaccoalition.org/files/official-documents/executive-summary-zimbabwe.pdf>

the Ministry of Home Affairs, the Attorney General's Office, the Director of Public Prosecutions, the Zimbabwe Republic Police, the Financial Intelligence Unit, the National Economic Conduct Inspectorate and the Public Service Commission.¹⁰³

However, according to the Conference of the States Parties of the United Nations Convention against Corruption's 2013 executive summary all these institutions are limited in their resources and capacities.¹⁰⁴

In the following, the focus is set on the examination of the functioning of the Zimbabwe Anti-Corruption Commission (ZACC) which constitutes a cover-up operation ironically financed by public funds and created for the benefit of the corrupt ruling elites, whose political survival hinges on political patronage and a clientele system of corruption¹⁰⁵:

The original ZACC from 2004, composed mainly of ZANU- PF members or sympathisers, was highly ineffective as particularly senior ZANU- PF members were not investigated¹⁰⁶ despite being implicated in corruption. Therefore when the Government of National Unity renewed the ZACC in August 2011 this institution was confronted with scepticism by the public.

The ZACC's mandate is defined in the Constitution of 2013 in Art. 255 and the Anti-Corruption Act 12.3, 12.4 and 12.5.¹⁰⁷ Its main functions are to combat corruption in the private and public sectors and to make recommendations to the government and the private sector to increase accountability and integrity and to prevent improprieties.¹⁰⁸

In consultations with the Parliamentary Committee on Standing Rules and Orders, the President appoints the Commissioners¹⁰⁹ who report directly to the Parliamentary Committee through the Ministry of Home Affairs.

¹⁰³ Conference of the States Parties to the United Nations Convention: *Executive summary Zimbabwe* retrieved on 03.02.2017 <http://uncaccoalition.org/files/official-documents/executive-summary-zimbabwe.pdf>

¹⁰⁴ Conference of the States Parties to the United Nations Convention: *Executive summary Zimbabwe* retrieved on 03.02.2017 <http://uncaccoalition.org/files/official-documents/executive-summary-zimbabwe.pdf>

¹⁰⁵ Corruption in Zimbabwe: An examination of the roles of the state and civil society in combating corruption by Stephen Moyo, p.243 retrieved the 27.01.2017, [http://clou.uclan.ac.uk/10965/1/Moyo%20Stephen%20Final%20e-Thesis%20\(Master%20Copy\).pdf](http://clou.uclan.ac.uk/10965/1/Moyo%20Stephen%20Final%20e-Thesis%20(Master%20Copy).pdf)

¹⁰⁶ Cf.: The War Victims Compensation Fund Scandal; The District Development Fund (DDF); The VIP Housing Scandal; The Willowgate Scandal

¹⁰⁷ Art. 12 of the Anti Corruption Commission Act retrieved on 26.01.2017 <http://www.track.unodc.org/LegalLibrary/LegalResources/Zimbabwe/Laws/Zimbabwe%20Anti-Corruption%20Commission%20Act%202004.pdf>

¹⁰⁸ Art. 255 of the Constitution of Zimbabwe 2013 retrieved on 26.01.2017 https://www.constituteproject.org/constitution/Zimbabwe_2013.pdf

¹⁰⁹ Conference of the States Parties to the United Nations Convention: *Executive summary Zimbabwe* retrieved 03.02.2017 <http://uncaccoalition.org/files/official-documents/executive-summary-zimbabwe.pdf>

Though these Commissioners were challenged by the President to investigate and prosecute politicians from all the parties without fear or favour and therefore complaints alleging corruption can be made from anyone to the ZACC which is empowered to investigate them, the ZACC from 2011 is as much a failure as its predecessor.

One of the reasons the ZACC after 2011 failed again is that the Commissioners' independence is compromised as they are nominated by political parties, appointed by the President and report to the Parliamentary Committee through the Ministry of Home Affairs.

Furthermore the ZACC does not have the power to arrest and prosecute the offenders, but requires the assistance from the ZRP and the Attorney's General's office to secure prosecution. Therefore the prosecution is nearly impossible when the two latter are not willing to arrest or prosecute those suspected of corruption¹¹⁰. Consequently the ZACC's investigations often lead into a dead end without any consequences for the offenders and thus impunity is the order of the day. Rather than complementing each other in the fight against corruption, there has been a lack of co-operation and/or interphase between these organs, a characteristic favourable to the survival and proliferation of corruption.¹¹¹

It is the complexity of corruption control in Zimbabwe – whereby at one end the state creates the Anti- Corruption apparatus while on the other does not fully support its functionality, which leaves the ZACC vulnerable to criticism. This has produced an institutionalisation of corruption and a culture of patronage that reinforces uneven power structures.¹¹²

In addition, the ZACC lacks funding and human expertise in dealing with corruption cases, which makes it nearly impossible for this institution to operate effectively. According to Global Integrity (2011) the Commission is highly inefficient, under-funded and has limited authority to effectively fulfil its mandate.¹¹³ Hence the ZACC fails in running public awareness campaigns which would be necessary to help the public understand the negative impact and effects of corruption on the socio-economic and political developments of the nation as well as the way the ZACC functions and its objectives.

¹¹⁰ Cf.:The Case of the Zimbabwe Football Association Chief Executive Officer Henrietta Rushwaya

¹¹¹ Corruption in Zimbabwe: An examination of the roles of the state and civil society in combating corruption by Stephen Moyo, p.227 retrieved on 27.01.2017
[http://clou.uclan.ac.uk/10965/1/Moyo%20Stephen%20Final%20e-Thesis%20\(Master%20Copy\).pdf](http://clou.uclan.ac.uk/10965/1/Moyo%20Stephen%20Final%20e-Thesis%20(Master%20Copy).pdf)

¹¹² Corruption in Zimbabwe: An examination of the roles of the state and civil society in combating corruption by Stephen Moyo, p.228 retrieved on 27.01.2017
[http://clou.uclan.ac.uk/10965/1/Moyo%20Stephen%20Final%20e-Thesis%20\(Master%20Copy\).pdf](http://clou.uclan.ac.uk/10965/1/Moyo%20Stephen%20Final%20e-Thesis%20(Master%20Copy).pdf)

¹¹³ Global integrity report 2011: *Zimbabwe* retrieved on 03.02.2017
<https://www.globalintegrity.org/research/reports/global-integrity-report/global-integrity-report-2011/gir-scorecard-2011-zimbabwe/>

Furthermore the lack of funding highly compromises the independence of this institution and thus the effectiveness of its work.

Kenya

“Prevention, suppression and punishment of corruption frequently feature in Kenyan political rhetoric, but rarely is this rhetoric matched by action.” states the Africa Governance Monitoring and Advocacy Project (AfriMAP) in its review 2015.¹¹⁴

I. Overview/ Current situation

Corruption remains endemic to Kenya’s public sector despite the fact that laws and institutions to combat corruption are in place since the adoption of the new constitution in 2012.

While Kenya has seen consistent political promises to combat corruption, it is widely practised with impunity and there has only been a slight improvement over the past decade according to both Transparency International Corruption Perception Index and the World Bank’s Governance Indicators. Each year the Kenya Bribery Index (KBI) observes that Kenyans frequently have corruption experiences in their interactions with national and local government institutions. According to Transparency International’s Global Corruption Report 2009, the cost of corruption is a serious deterrent to potential investors and a major impediment for existing and new businesses.¹¹⁵

Corruption in Kenya manifests itself through various forms including petty and grand corruption, embezzlement of public funds and a system of political patronage well entrenched within the fabric of society.¹¹⁶

One of its biggest corruption scandals is the Goldenberg Affair, involving several senior Moi-regime officials.

¹¹⁴Review 2015 AfriMAP:*Effectiveness of Anti-Corruption Agencies in East Africa* retrieved on 08.02.2017
<http://www.africanminds.co.za/wp-content/uploads/2016/01/AfriMAP-East-Africa-Anti-Corruption-Agencies-text-25Nov1245-WEB.pdf>

¹¹⁵ Transparency International: *Global Corruption Report 2009* retrieved on 03.02.2017
[http://www.ey.com/publication/vwluassetsdld/globalcorruption_au0359_september2009/\\$file/globalcorruption_au0359_september2009.pdf?OpenElement](http://www.ey.com/publication/vwluassetsdld/globalcorruption_au0359_september2009/$file/globalcorruption_au0359_september2009.pdf?OpenElement)

¹¹⁶Review 2015 AfriMAP:*Effectiveness of Anti-Corruption Agencies in East Africa* retrieved on 03.02.2017
<http://www.africanminds.co.za/wp-content/uploads/2016/01/AfriMAP-East-Africa-Anti-Corruption-Agencies-text-25Nov1245-WEB.pdf>

II. Governance structures and anti-corruption efforts

1. *The legal framework*

Kenya ratified the United Nations Convention Against Corruption (UNCAC) in 2003 as well as the African Union Convention on Preventing and Combating Corruption (AU Convention) in 2007. It is also a partner state and has expressed support for the draft East African Community Protocol on Preventing and Combating Corruption.

As of July 2014, Kenya's national assembly had passed laws to domesticate the UNCAC and AU conventions, including the 2012 Leadership and Integrity Act, the 2011 Ethics and Anti-Corruption Commission Act, and the 2009 Proceeds of Crime and Anti-Money Laundering Act.

The new constitution of 2012 represented a key milestone for the fight against corruption, strengthening legislative oversight, increasing the judiciary's independence and devolving central administration to 47 County governments.¹¹⁷

2. *The Ethics and Anti-Corruption Commission (EACC)*

The EACC was created in 2011, replacing the former Kenya Anti-Corruption Commission with the mandate to investigate corruption and economic crimes as well as awareness-raising on the damaging impact of corruption.

It has been established under article 79 of the Constitution of 2010, which provides as follows:

*“Parliament shall enact legislation to establish an **independent** ethics and anti-corruption commission, which shall be and have the status and powers of a commission under chapter 15, for purposes of ensuring compliance with, and enforcement of the provisions of chapter 6 of the constitution.”*

At the same time Art 73 of Chapter 6 of the Constitution sets high standards of integrity for office holders.¹¹⁸

Furthermore Art. 249 of Chapter 15 of the Constitution states that:

¹¹⁷U4 Anti Corruption Resource Centre, *Kenya: overview of corruption and anti-corruption* retrieved on 05.02.2017 <http://www.u4.no/publications/kenya-overview-of-corruption-and-anti-corruption/downloadasset/3114>

¹¹⁸ Art. 73 Chapter 6 of the Constitution of Kenya

“The Commissioners and the holders of independent offices

*(a) are subject only to this Constitution and the law; and
(b) are **independent** and not subject to direction or control by any person or authority.”¹¹⁹*

As well as that:

*“Parliament shall **allocate adequate funds** to enable each commission and independent office to perform its functions and the budget of each commission and independent office shall be a separate vote.”*

Although the EACC is operationally independent of both the executive and the legislative branches, it is constituted by an appointment process that requires vetting by and approval of the national assembly and formal appointment by the president.¹²⁰

The commissioners of the EACC are state officers as per the Constitution and as such cannot be officers of a political party or run for political offices.¹²¹ They serve with security of tenure for six-year terms¹²², which is longer than the 5 year terms of the president and the national assembly and can only be removed by a tribunal following a recommendation by parliament to the president, who then appoints such tribunal.¹²³

Operationally the EACC must make annual and other periodic reports to the national assembly and the president, as well as be accountable through the auditor general’s audit for its use of public funds.¹²⁴

The EACC has a clear mandate in terms of the prevention of corruption, as well as regarding the sensitisation and education of the public in the fight against corruption and operates an online whistle-blowing system known as the Business Keeper Management System, which

¹¹⁹ Cf. Part IV 28. of the Ethics and Anti- Corruption Commission Act of 2011

¹²⁰ Art. 250 Chapter 15 of the Constitution of Kenya

¹²¹ Part II 5. (3a) of the Ethics and Anti-Corruption Commission Act of 2011

¹²² Art. 250 Chapter 15 of the Constitution of Kenya

¹²³ Art. 251 Chapter 15 of the Constitution of Kenya

¹²⁴ Art. 254 Chapter 15 of the Constitution of Kenya

facilitates anonymous online corruption reporting.¹²⁵ Nevertheless the EACC is not widely relied upon by Kenyans in reporting corruption.¹²⁶

Even though the EACC and its predecessors have seen some successes (it has investigated over 13000 cases, successfully developed over 650 cases for prosecution between 2008 and 2013, and recovered KES 6.8 billion (USD 80.4 million) during the same period¹²⁷) the effectiveness of latter has to be doubted.

The Commission does not have prosecutorial powers.¹²⁸ Constitutionally criminal prosecutions may only be conducted by the DPP. The EACC submits the files to the DPP, who, after assessing the evidence gathered, may initiate a prosecution and file charges, or may return the file requesting further evidence from the commission. In the past relations between the commission and the DPP were strained and subject to casting blame. However, both the EACC and the DPP have reported that the mutual cooperation between the two institutions was much improved in 2014. Both attribute this improvement in relations to the integrated public complaints referral mechanism which they use for improving and facilitating institutional collaboration.¹²⁹

A further impediment for the Kenyan fight against corruption is that the EACC perennially faces the challenge of inadequate resources, as it is not allocated its annual budget request.¹³⁰

Conclusion

This brief comparative analysis suggests that proper compliance with the STIRS criteria, which are law in South Africa, is a strong indicator of the success of a single, specialised and well trained anti-corruption entity clothed with sufficient autonomy to be called adequately

¹²⁵ Review 2015 AfriMAP:*Effectiveness of Anti-Corruption Agencies in East Africa* retrieved on 08.02.2017 <http://www.africanminds.co.za/wp-content/uploads/2016/01/AfriMAP-East-Africa-Anti-Corruption-Agencies-text-25Nov1245-WEB.pdf>

¹²⁶ Review 2015 AfriMAP:*Effectiveness of Anti-Corruption Agencies in East Africa* retrieved on 08.02.2017 <http://www.africanminds.co.za/wp-content/uploads/2016/01/AfriMAP-East-Africa-Anti-Corruption-Agencies-text-25Nov1245-WEB.pdf>

¹²⁷ Review 2015 AfriMAP:*Effectiveness of Anti-Corruption Agencies in East Africa* retrieve on 08.02.2017 <http://www.africanminds.co.za/wp-content/uploads/2016/01/AfriMAP-East-Africa-Anti-Corruption-Agencies-text-25Nov1245-WEB.pdf>

¹²⁸ Part II 11. (1d) of the Ethics and Anti-Corruption Commission Act 2011

¹²⁹ Review 2015 AfriMAP:*Effectiveness of Anti-Corruption Agencies in East Africa* retrieved on 08.02.2017 <http://www.africanminds.co.za/wp-content/uploads/2016/01/AfriMAP-East-Africa-Anti-Corruption-Agencies-text-25Nov1245-WEB.pdf>

¹³⁰ Review 2015 AfriMAP:*Effectiveness of Anti-Corruption Agencies in East Africa* retrieved on 08.02.2017 <http://www.africanminds.co.za/wp-content/uploads/2016/01/AfriMAP-East-Africa-Anti-Corruption-Agencies-text-25Nov1245-WEB.pdf>

independent, with guaranteed resources and security of tenure of office of its key personnel. Conversely, in those countries in which there is a multi-agency approach and poor compliance with the STIRS criteria, success in dealing with the corrupt is more limited.

The resolutions of two Pan-African conferences concerning corruption held in 2015 and 2016 are instructive:

Cape Town Declaration of 5 November 2015

1. Noting the corrosive and pervasive nature of corruption in the world today, both in the private and in the public sectors.
2. Identifying corruption as a symptom of moral depravity, inimical to respect for and promotion of human rights, especially those of the poor and marginalised.
3. Recognizing that it is the duty of states, commercial enterprises and all right thinking people to prevent and combat corruption because corruption is generally a serious and deplorable crime.
4. Appreciating that constitutional democracy under the rule of law and social stability are not served when corruption is endemic.
5. Noting that the widely accepted criteria for effective and successful anti-corruption entities include specialization by, training of, independence for, guaranteed resources for and security of tenure of staff of anti-corruption entities.
6. Acknowledging that corruption in Africa has reached levels that threaten and undermine economic progress and growth throughout the continent despite the adoption and domestication of international, continental and regional instruments of international law that commit most countries in Africa to prevent , combat, investigate and prosecute corruption.
7. Concluding that corruption with impunity is inhibiting investment, increasing the cost of conducting business, undermining service delivery and exacerbating poverty in Africa and that corruption must be curbed to facilitate higher and more equitable economic growth.

Conference resolves that :

- a. Governments should establish, strengthen, promote and, where appropriate, constitutionally entrench anti-corruption entities that comply with the criteria noted in clause 5 above, both structurally and operationally.

- b. In the formulation of policy and laws, corruption should universally be regarded as an infringement of human rights, which is both immoral and unethical.
- c. Existing anti-corruption entities should be assessed and reviewed for their structural and operational compliance with the criteria noted in clause 5 above for the purpose of making adjustments and reforms where they are required.
- d. Greater protection and incentivising of whistle-blowers, whether or not they are employees, should be considered in order to fortify this important aspect of the combating of corruption through appropriate investigation, prosecution and punishment of the corrupt in both the private and public sectors.
- e. The nurturing of anti-corruption entities, both in the state and in civil society, through public education and the stimulation of the necessary political will to regard corruption as immoral, unethical and as a crime that violates human rights and undermines constitutionalism, should be encouraged through all means available in all forms of media.
- f. A sanctions system, such as that developed by the World Bank, should be considered for implementation at the level of national jurisdiction in relation to all public procurement in whatever sphere of government, including procurement by state owned enterprises.
- g. The private sector and civil society organisations should be encouraged to adopt and implement anti-corruption compliance programmes as contemplated by the Organisation for Economic Co-operation and Development.
- h. Governments should establish a framework for the open and comprehensive declaration of assets and interests by all political office bearers and public officials.

A follow up conference was held a year later on activism against corruption and it resolved:

Johannesburg Declaration of 24th November 2016

- A. Conference takes note of the resolutions passed by the Cape Town Combating Corruption Conference in November 2015,
- B. Conference acknowledges that generating the political will to tackle the menacing scourge of corruption effectively is vital to the success of anti-corruption initiatives.
- C. Sensitising and empowering ordinary citizens to create the ripple effect necessary to conquer corruption is at the core of activism against corruption.

- D. It is the responsibility of political parties, the civil service, the media, civil society organisations, trade unions, commerce and industry in Africa to devise programs and strategies that will ensure the fight against corruption is everyone's business.
- E. The role of faith-based organisations is critical to the re-establishment and promotion of sound moral, ethical and spiritual values.
- F. Through its investigation and exposure of corruption, the media plays a pivotal role in popularising the struggle against corruption.
- G. Traditional leaders throughout Africa who govern with integrity and responsiveness to the interests of those they lead have a vital role to play in conquering corruption
- H. Properly focussed interventions and mechanisms with a multiplicity of strategies at national, regional, continental and worldwide levels are an efficient way of taking on the corrupt.
- I. Machinery of state must comply with the internationally recognised criteria for effective corruption busting.

Conference accordingly resolves that:

- 1) *National audits of the anti-corruption machinery of state should be encouraged to ensure that the internationally recognised criteria for anti-corruption entities are universally complied with in Africa.*
- 2) *Media campaigns and advocacy, designed to create awareness of the internationally recognised criteria for and the need to create compliant machinery of state, need to be organised.*
- 3) *Traditional leaders, civil society, the civil service, trade unions and political parties all have an active role to play in campaigning against corruption.*
- 4) *The mobilisation of faith-based organisations around the effects that corruption has on the poor and the vulnerable is critical to the success of the struggle against corruption and the elimination of poverty in Africa.*

- 5) *Steps must be devised and popularised at country level to secure implementation of the strategies set out in resolutions f, g and h of the Cape Town Conference. Politicians and public servants must be encouraged to champion one or more or all of the said strategies which area.*

- 6) *The international community of nations must use its capacity to monitor and investigate global financial movements via the Society for Worldwide Interbank Financial Telecommunication (Swift) as a means for identifying illegal movements of funds implicated in corrupt activity around the world. This capacity must be used to secure the prosecution of individuals and companies who are involved in corruption. Every effort must be made to recover funds which are the product of corrupt activity and to return these funds to the lawful authorities in their countries of origin.*

- 7) *All delegates at conference commit themselves and the organisations they represent to “say no to corruption” and “yes” to integrity.*

Accountability Now
5 June 2017