

## Anti-corruption prosecutorial agencies: effectiveness and funding modalities

### Query:

*“Could you give me examples of different funding modalities for government agencies that are set up to investigate and prosecute corruption? Are there examples where these are funded by country governments (possibly by using budget support funds) or do they tend to be supported directly by donors? In a budget support country how realistic is it to expect such an agency and its sometimes controversial activities to be financed through a Ministry of Finance rather than directly by donors? I realise that the answer will be that it is context specific but examples from different countries would be useful.*

*“I am also interested in the political reality of governments establishing effective agencies to investigate themselves or their political allies. Do you have examples where a government agency supported by that government has taken serious steps and successfully investigated cases of grand corruption committed in their own administrations or a previous administration that is effectively the same government in terms of political make up. The UN Convention would seem to require a government to do this - what is the reality of this?”*

### Purpose:

“To be aware of any experience from other countries in this area in order to develop a realistic expectation in relation to a current situation.”

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### Part 1: Introduction

We understand that the enquirer is seeking advice on how to ensure the autonomy and effectiveness of agencies that investigate and prosecute corruption (should it be a stand-alone agency, a section within an anti-corruption commission or should anti-corruption investigative and prosecutorial powers be invested in the state’s prosecution office). Since such agencies may come into conflict with government actors (who could be the subject of their investigations and prosecutions) there is a risk that they are vulnerable to budget cuts or

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other types of political interference in their operation. The enquirer is seeking to explore whether donors can reduce such vulnerability by considering whether different funding modalities used to finance these agencies may have an impact on ensuring their autonomy. The enquirer is also interested in learning of any successful prosecutions of grand corruption by such agencies.

In this U4 Expert Answer we respond to the enquirer's concerns by discussing how agencies have been funded in various countries and the prosecutions these agencies have pursued. However, since the ultimate goal of the enquirer is to help build an agency that effectively investigates and prosecutes corruption we first take some time to explain the other elements of a National Integrity System that ought to be in place in order to achieve an effective agency of this type. We continue by outlining the financing of such agencies and conclude by describing some successfully prosecuted cases of grand corruption.

## **Part 2: The Concept of a National Integrity System and the effectiveness of anti-corruption prosecutorial agencies**

Anti-corruption agency or agencies in a country form just one pillar in a National Integrity System, or NIS.

The concept of the NIS, promoted by Transparency International, helps us better understand the importance of taking a holistic approach to fighting corruption. It encompasses the key institutions, sectors or specific activities (the 'pillars') that contribute to integrity, transparency and accountability in a society. When it functions properly, the NIS combats corruption as part of the larger struggle against abuse of power, malfeasance and misappropriation in all its forms.

Where such a holistic approach to fighting corruption exists, it is much more difficult for political elites to run roughshod over the multiple layers of anti-corruption regulation and accountability mechanisms in place. In relation to the enquirer's concerns, should a government attempt interference with the legal process of an anti-corruption prosecutorial agency, a strong national integrity system should ensure that many other pillars respond to such political interference. For example, civil society could raise awareness, the media could scrutinise the government's actions, the parliament could demand accountability and so forth.

One finding that studies of the NIS in numerous countries have identified is that multiple agencies dealing with anti-corruption efforts including investigation and prosecution dilutes the effectiveness of each agency in the system (see the Asia regional NIS overview, which will be available in 2007, and can be obtained by contacting Victoria Jennett [vjennett@transparency.org](mailto:vjennett@transparency.org) directly). In institutional terms the prosecution of corruption cases is the function of the prosecutor's office. To locate such functions in other structures only serves to create parallel structures within the state. Of course other agencies can investigate and analyse cases, but it is most appropriate for them to forward their evidence to the prosecutor's office for actual prosecution of the case.

## **Part 3: The Funding of anti-corruption prosecutorial agencies and their effectiveness**

We concentrate our analysis of the funding sources – and the effectiveness – of anti-corruption investigative and prosecutorial agencies on three countries: Vietnam, Korea and

Nigeria. For each country we describe the independence, source of funding and prosecutions undertaken. This offers the enquirer comparative information to help understand the structures of such agencies – and the strengths and limitations of such structures – in different contexts. Information is also provided on the situation of anti-corruption agencies in Guatemala and Montenegro.

Whilst, as the enquirer implies, the funding modality (whether a donor's aid is transferred through budget support or via project finance) may lend itself to greater or lesser potential for political manipulation, political interference does may in fact depend on other contextual factors.

### **Vietnam**

**Overview.** In Vietnam, the People's Procuracy and People's Police Force are the two primary agencies responsible for legal enforcement in Vietnam, including corruption cases. In addition, the Government Inspectorate is responsible for investigations, and the State Audit and Ministry of Finance have inspection duties relating to use of public funds. The Central Inspection Commission of the Communist Party of Vietnam (CPV) is responsible for investigating Party members.

**Funding.** The budget and the number of prosecutors and investigators is decided by the National Assembly at the proposal of the prosecutor-general. The prosecutor-general decides on the budgets of lower-level units, consulting with the minister of defence for military procuracies. Funding for the police forces comes from the state budget. The police in particular have access to off-the-books funds. The National Assembly allocates state budget funds to the Government Inspectorate.

**Independence.** The prosecutor-general (attorney general) is elected and removed by the National Assembly at the proposal of the president. The prosecutor-general reports to and is supervised by the National Assembly. The inspector general reports to the National Assembly and the prime minister. The police are formally under the leadership of the CPV. The minister of public security manages the security and police forces and is not independent of the Party or government. The National Assembly has a supervisory role over the People's Police Force but is subservient to the CPV.

**Prosecutions.** Disciplining of civil servants and Party members has increased, and more cases are handled through the courts. However, no special units exist for prosecuting corruption. The procuracy and investigative agencies themselves are frequent targets of corruption, as interested parties attempt to prevent cases from going to court. Those prosecutions of corrupt public servants that do occur are nearly always successful; while issues may arise concerning exact penalties, guilt is usually already decided and conviction assured. In 2006 investigations were launched into misuse of funds, including foreign aid received, especially by the Ministry of Transport. Many high-level officials were implicated; the minister was forced to resign and his deputy was arrested.

### **Korea**

**Overview.** The Korea Independent Commission Against Corruption [KICAC] is Korea's designated governmental anti-corruption agency. It advises on improvement of laws and institutions for the prevention of corruption and the formulation and implementation of anti-corruption policies. The Public Prosecutor's Office carries out prosecutions and also directs and supervises the police and other law enforcement agencies.

**Funding.** The budget of the Public Prosecutor's Office is included in the budget of the Ministry of Justice in order to maintain its independence. However, such inclusion gives more room for the Office to use its budgets without proper approval from the National Assembly, and can infringe on financial transparency.

**Independence.** KICAC is an independent governmental organisation under the president.

The Public Prosecutor's Office falls under the supervision of the Ministry of Justice, and the minister of justice supervises prosecutorial affairs as the highest superintendent. Nevertheless, the minister's actual supervisory power over individual prosecutors is restricted to general matters, and in special criminal cases, the minister can only direct the prosecutor general. On only one occasion in history has the minister of justice used this supervisory power.

Concern has long mounted over the independence of the Public Prosecutor's Office in Korea, and its employees are often criticised for appearing beholden to the interests of the government and other vested-interest groups. For example, when in 2001 the head of a corporate restructuring company turned out to have been involved in wide-ranging stock manipulations, fraud and suspicious relationships with numerous high-ranking public officials, the Public Prosecutor's Office was criticised for its lack of independence and fairness in its investigation.

**Prosecutions.** The Public Prosecutor's Office has pursued hard-line and independent investigations and prosecutions, such as in the investigation of slush funds provided to various politicians in 2002. In 2005, however, the Office's commitment and independence again were questioned when it was lenient to white-collar crimes committed by large conglomerates such as the Samsung Group, the Daesang Group and the Doosan Group. Courts have been criticised for being too lenient towards corruption attempts and practices of parliamentarians.

## **Nigeria**

**Overview.** The Independent Corrupt Practices and Other Related Offences Commission (ICPC) and the Economic and Financial Crimes Commission (EFCC) are empowered to investigate and prosecute corruption in Nigeria.

**Funding.** The EFCC and ICPC are intended to have financial independence. However, in practice they receive government funds, including from the president's budget. Foreign aid has provided technical support to the ICPC and the EFCC, for example from the United States, Britain and the European Union.

**Independence.** Both agencies are legally independent. However, critics have accused the government of interfering in particular with the activities of the ICPC.

**Prosecutions.** Both the ICPC and the EFCC have successfully prosecuted corrupt officials. According to the EFCC, it has recovered more than US\$5bn and has successfully prosecuted 82 people in the past two years. A former chief of police, a government minister and a former state governor have been targeted, among others. However, the ICPC especially has been criticised for not being sufficiently proactive, and for being used as a tool to pursue the president's political enemies. Generally only lower level officials and

businessmen are convicted, in part due to the immunity held by certain political officers. The EFCC has gained more credibility with the public for its effectiveness.

In **Guatemala**, no institution is exclusively responsible for enforcing anti-corruption measures. The prosecutor general is nominated by the president. Due to lack of clarity in the laws, political interference in the career of the prosecutor general is possible. As a result, the office has been subject to political pressure in important cases. USAID has supported the institutional/functional strengthening of the special prosecutor's office, part of the General Prosecutors office, for corruption cases.

In **Montenegro** there is a Governmental Agency for Anti-Corruption in charge of developing legislation and awareness-raising, but without powers for investigation and prosecution. It is established within the Ministry of Finance. The Agency is funded by foreign donors; in particular the Council of Europe and OSCE are currently providing financial support, but those funds are provided on a project basis and are not likely to be long-term. Within their PACO/IMPACT Project, the Council of Europe wanted to strengthen the capacity of the Agency and therefore lobbied the Government to grant the Agency the authority to conduct investigations, and possibly even prosecutions. However this does not appear to have had an effect.

To recap, the funding modality of an anti-corruption agency is not the only factor relevant to its effectiveness. Indeed, as the previous section has indicated the whole national integrity system needs to be mobilised in order to provide multiple protections against political interference with investigative and prosecutorial agencies.

## **Part 4: Successful prosecutions of grand corruption**

### ***The Lesotho Case***

See Fiona Darroch, 'Case Study: Lesotho puts international business in the dock' in TI Global Corruption Report 2005

[http://www.transparency.org/publications/gcr/download\\_gcr/download\\_gcr\\_2005](http://www.transparency.org/publications/gcr/download_gcr/download_gcr_2005)

In 1986 the governments of Lesotho and South Africa signed a treaty that gave rise to the Lesotho Highlands Water Project. With five major dams, 200 kilometres of tunnels and a powerful hydroelectricity station to be completed by 2020, the US \$8 billion infrastructure scheme was to control and exploit the flow of the Senqu River (known as the Orange River in South Africa). In doing so, the project was also expected to provide water for Gauteng province in South Africa, and to generate electricity and money for the people of Lesotho.

After a civilian government replaced the military regime in Lesotho in 1993, the government commissioned an audit of the project's two oversight bodies, the Lesotho Highlands Development Authority (LHDA), a semi-autonomous state corporation, and the Trans-Caledon Tunnel Authority (TCTA), the implementing agency for the relatively small part of the project in South Africa. The audit revealed substantial administrative irregularities within the LHDA and gave rise to an inquiry into the conduct of its chief executive officer, Masupha Ephraim Sole. By 1996 Sole had been dismissed from the LHDA, a decision that was upheld in subsequent appeals. Sole's trial began in June 2001. Charged with 16 counts of bribery and two of fraud, Sole chose not to furnish evidence. Judge Brendon Cullinan, a former chief justice of Lesotho, found Sole guilty as charged and sentenced him to 18 years in prison. In his judgment, Cullinan observed that the transactions in question 'inextricably bound

together' the defendant consultants and contractors, the intermediaries, and Sole himself. Sole appealed, but succeeded only in reducing the sentence to 15 years.

The Canadian engineering giant Acres International had been involved in two contracts within the LHWP, one of them financed by the World Bank, and was the first company to be tried in connection with the payments to Sole. Prosecutors alleged that Acres had made payments to Sole through Zaliswonga Bam, one of the intermediaries, who died of a heart attack in 1999. Evidence showed a clear pattern of payments made by Acres to Bam, using numbered Swiss bank accounts. Bam took a percentage and then moved the remainder of the money into Sole's accounts. On being convicted and sentenced to a fine of US \$2.5 million, Acres refused to accept the ruling of the court, suggesting that the judge had been incompetent and the trial unfair. Acres' appeal failed.

### ***The Goldenberg Case***

See 'The Judicial Commission of Inquiry into the Goldenberg Affair'

<http://www.tikenya.org/viewdocument.asp?ID=224>

The Goldenberg scam involved licences and credits being issued for fictitious gold and diamond exports in the early 1990s. Although success in this case has not clearly been realised there are a series of ongoing prosecutions. See for example Wilfred Karuga Koinange v The Commission of Enquiry into Goldenberg [2006] [http://www.kenyalaw.org/articles/show\\_article.php?view=238&cat=7&lmenu=2-1](http://www.kenyalaw.org/articles/show_article.php?view=238&cat=7&lmenu=2-1)

### ***The Zuma Case***

See 'Zuma's Corruption Trial Collapses' <http://news.bbc.co.uk/2/hi/africa/5362968.stm>

After his financial adviser was found guilty of corruption in a case related to a government arms procurement deal in the 1990s, Deputy President Jacob Zuma was dismissed from the government of South Africa in 2005. Evidence that came out in the adviser's trial prompted the National Prosecuting Authority to start investigating charges against Zuma as well. However, the charges were dropped in September 2006 after the prosecution said it was not prepared to proceed. As deputy leader of the ruling African National Congress party, Zuma is expected to run for president when Thabo Mbeki steps down in 2009.

### ***The Aleman Case***

After Enrique Bolanos won the presidency in Nicaragua in 2002 promising to fight corruption, he pursued fraud charges against former president Arnoldo Aleman. Bolanos was a former vice president and chosen successor of Aleman, both members of the same political party. Aleman was accused of embezzlement and money laundering. The National Assembly stripped him of his immunity in order to prosecute him, and he was sentenced to 20 years in prison. Meanwhile, Bolanos' party turned against him as a result of his pursuit of Aleman, withdrawing their support and accusing him of corruption as well, although their charges were not pursued further.

## **Part 5 : Further reading**

Council of Europe Octopus Programme: Anti-Corruption Services: Good practice in Europe

[http://www.coe.int/t/e/legal\\_affairs/legal\\_cooperation/combating\\_economic\\_crime/3\\_Technical\\_cooperation/OCTOPUS/2003/Seminar\(2003\)Sxb.asp](http://www.coe.int/t/e/legal_affairs/legal_cooperation/combating_economic_crime/3_Technical_cooperation/OCTOPUS/2003/Seminar(2003)Sxb.asp)

TI National Integrity System

[http://www.transparency.org/policy\\_research/nis](http://www.transparency.org/policy_research/nis)