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## **BASIC PRECONDITIONS OF ANTI-CORRUPTION STRATEGIES**

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Corruption is one of the main feeding sources of organized crime. We are witnessing that the crime of corruption not only hampers political stability, undermines economic and social foundations, unravels cultural and moral values, but also has devastating effects on the rule of law and rendering of public services. Undoubtedly, the crime of corruption is a global phenomenon which occurs in both developed and developing countries alike and which requires a global response and strategy.

Corruption has different forms and manifestations. Although they vary from country to country according to the level of economic development, and attitudes to it differ from one culture to another, corruption is fundamentally the same evil wherever it occurs. It has grown at an alarming

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rate in recent years due to, in particular, economic liberalization and globalization, the widespread introduction and use of new cyber technologies, and the increasing role of multinational corporations in a rapidly evolving political and economic context.

It is a matter of fact and experience that corruption may lead to political dissatisfaction among citizens which itself could prepare the ground for national upheavals. The spread of corruption among public officials is an indication that the mechanisms of checks and balances should be revisited. At the same time, the growing trend in corruption, if let unfettered, will pose grave dangers to democratic foundations of society. Essentially, corruption is a serious barrier to sustainable development by undermining the rule of law, weakening the economy and diversion of public resources.

### **BASIC PRECONDITIONS OF ANTI-CORRUPTION STRATEGIES**

The goal of the Anti-Corruption Strategy is to overcome corruption, to eliminate its root causes and the conditions conducive to its proliferation, to build a sound moral and psychological environment, which, in turn, will power the attainment of sustainable democratic institutions, a civil society, and a state based on the rule of law, the enhancement of free economic competition, economic development, and poverty reduction.

The development and implementation of an effective anti-corruption strategy requires the integration and coordination of many disparate factors. Elements of a strategy must be internally integrated with one another to form a single, unified and coherent anti-corruption strategy. Strategies and their elements must also be integrated with external factors, such as the broader efforts within a country to bring about such things as the rule of law, sustainable development, political or constitutional reforms, major economic reforms, or major criminal justice reforms.

In fighting corruption, there are preconditions/elements which should be considered at national and international levels:

## **THE NATIONAL LEVEL**

Recognizing the necessity of fighting corruption at the national level, countries shall adopt and enforce extensive judicial and administrative measures against corruption both in the private and public sectors. Among the useful control measures at the national level are: to check government activities including the formation of independent bodies such as ombudsman, avoiding conflict of interest situations, establishment of a code of conduct for public officials, ensuring the efficiency and independence of the judiciary, development of public opinion against corruption, establishment of a special independent national body as well as a General Inspection Organization, implementation of a system for declaring the income of officials who perform specific public functions, and creation of new legislative and executive instruments, which would help fight and prevent corruption more effectively.

Specific needs will vary from country to country, but experience suggests that the following elements/ preconditions will be needed before significant progress is likely to be achieved, and that early efforts must be focused on these elements/ preconditions which are also necessary for any criminal justice reform. In fact the aim is to help countries to find a general model for fighting corruption more effectively and to learn what preconditions are necessary to get rid of the scourge.

(The list below is indicative and not exclusive)

## **RULE OF LAW**

Effective rule-of-law structures are needed at an early stage. These include both legislative and judicial elements. Inadequate rule of law elements have been seen as a critical area which has limited the effectiveness of other reforms. Rule of law reforms are also viewed by most as a major priority because the necessary legal and judicial skills and expertise cannot simply be imported and they take time to be produced.

## **TRANSPARENCY**

Transparency is widely viewed as a necessary condition both to effectively control corruption, and more generally for promoting rule of law. Open information and understanding is also essential to public input and ownership of anti-corruption strategies. A lack of transparency with respect to anti-corruption strategies is likely to result in public ignorance when in fact broad support and participation is needed.

Transparency in public institutions, both in the form of public communications efforts and in broad, is needed to ensure that the public understands what its government is doing and to ensure that the actions of government are credible.

## **ACCOUNTABILITY**

Generally, this includes standards and rules governing conduct, and bodies or tribunals which deal with breaches of such standards. In holding individual members accountable, it should be borne in mind that those who hold (elected) offices are politically as well as legally accountable. Where there is accountability, the quality of decision making will also improve.

Holding elected members politically accountable requires that there be transparency with respect to the business and the conduct of elected members.

## **THE NEED FOR INCLUSIVENESS**

Including the broadest possible range of participants or stakeholders is important, both to ensure that all significant factors are considered and to instil a sense of “ownership” and support for the strategy. It also demonstrates that people will have an effect on policy-making, and give a greater sense of ownership for the policies which are developed. In societies where corruption is endemic, it is these individuals who are most often affected by corruption, and who are most likely to be in a position to take action against it, both in their everyday lives, and by supporting political movements against it.

## **DEVELOPING A CULTURE AGAINST CORRUPTION**

A professional, politically neutral and uncorrupted public service serves both as a means whereby corruption can be addressed, and as one of the fundamental objectives of anti-corruption strategies.

Generally, establishing professionalism and neutrality will require a combination of legal standards and cultural reforms. The cultural reforms are needed both within the public service, whose members should be encouraged to adopt high standards of professionalism and integrity, and among the general population, which should be encouraged to expect such high standards of its public services and to complain or take action when the expected standards are not met.

## **USE OF POSITIVE INCENTIVES**

Many elements of anti-corruption strategies can be described as “negative” incentives in the sense that they are intended to deter or punish corrupt conduct by increasing or unpleasant consequences, such as criminal prosecution or sanctions, for those involved. The establishment of positive incentives, such as increased remuneration or compensation, increased or enhanced professional status and general improvements in job, working conditions and similar matters, is also an important anti-corruption measure. Generally, positive incentives can prevent or combat corruption in many ways.

## **THE ROLE OF THE JUDICIARY**

A professional, unbiased and independent judiciary is particularly critical to the development and implementation of law enforcement and criminal justice measures, but has also been identified as necessary in other areas such as the making and enforcement of legal contracts and the use of civil litigation as a means of identifying, exposing and obtaining redress for corrupt practices.

The reform or rebuilding of judicial institutions is often identified as a

major priority in anti-corruption strategies because the courts play a critical role in ensuring that other elements are effective. Judicial independence is identified as a necessary condition for the effective rule of law. Commonly judicial independence is understood to require independence from undue influence by non-judicial elements of government or the state, but in practice, judicial independence requires the insulation of judicial affairs from all extrinsic influences.

Any strategy for the reform of judicial institutions in a specific country should be carefully considered in light of the state of judicial independence in that country and the specific constitutional, legal and conventional measures used to protect it. Before anti-corruption reforms are instituted, it may be necessary to ensure that basic judicial independence from other elements of the state is in place and operating effectively.

#### **THE ROLE OF THE LEGISLATURE**

A legislature which is open and transparent, which formulates policy and creates laws in the public interest, and which provides a suitable role model for other institutions is needed to form the both a legal and political basis for an anti-corruption strategy.

Importance should be given to the role legislatures play in areas which are critical to the fight against corruption. These include general areas such as transparency and accountability in government and the formulation and adoption of anti-corruption laws. While the focus is on anti-corruption efforts, it must be noted that such efforts are often closely linked to the broader concerns of legislatures in areas such as criminal justice and the rule of law.

#### **ACTIVE PARTICIPATION OF CIVIL SOCIETY**

The participation of civil society in assessing the problem and implementing reforms is now seen as an important element of anti-corruption strategies. Anti- corruption measures and the commitment needed to make them work

must ultimately be based on a full assessment of the extent of corruption and its harmful effects which requires the participation of civil society. Similarly, policies and practical measures are most likely to succeed if they enjoy the full support, participation and ownership of civil society.

### **INTEGRITY IN POLICE AND CUSTOMS**

Failure to deal with corruption at all levels in a coordinated manner will at best result in reforms which are only partly effective and at worst simply result in the shifting of corrupt activity away from levels where effective controls and countermeasures are in place and towards levels where they are not. For example, a corrupt company who's bribing of legislative officials fails to produce legislation in its favour may simply resort to the bribery of local officials to ensure the legislation it opposes is not enforced. Therefore it is crucial to take necessary measures to fight corruption especially in relation to police and customs services/activities.

### **PERIODIC ASSESSMENT**

It is important that strategies be based on concrete and valid evidence at all stages. Preliminary assessments of the nature and extent of corruption and the resources available to fight it are needed to develop a comprehensive strategy and to set priorities before it is implemented. As a strategy is implemented, further assessments should be undertaken, both of individual elements and overall performance, so that implementation can be reviewed and adjusted to take advantage of successes and to compensate for failures.

Periodic assessment of corruption and the effectiveness of anti-corruption strategies, and the flexibility to adjust strategies to take account of such assessment, is also important. Experience has shown that corruption is a pervasive and complex problem and that efforts to combat it often have unforeseen consequences. Assessment and adjustment also entails identifying and replicating measures which have proven successful.

### **MONITORING PUBLIC SECTOR CONTRACTS**

The purpose is to create a specialised authority to monitor key contracts and transactions in areas where corruption is widespread. The basic functions of such an authority would include the review and validation of non-corrupt transactions, the identification of corrupt transactions and generating advice or recommendations for anti-corruption reforms.

### **WHISTLEBLOWER PROTECTION**

The purpose of whistleblower protection is to encourage people to report crime, civil offences and miscarriages of justice by safeguarding them against victimization, dismissal, and other forms of reprisal.

The culture of inertia, secrecy and silence breeds corruption. People are often aware of forms of misconduct but are frightened to report them. In some of these cases, victims may have been compensated but no one was held accountable for what happened. This culture persists because it is almost certain that the person who “blows the whistle” would be victimized. Therefore, to overcome this and to promote a culture of transparency and accountability, a clear and simple framework must be established that encourages “whistle-blowing” and protects them from victimization or retaliation.

### **ESTABLISHING SPECIALIZED ANTI-CORRUPTION AGENCIES**

Anti-corruption strategies will generally have to consider whether to establish separate institutions to deal exclusively with corruption problems.

The major advantages of separate institutions include the high degree of specialization and expertise that can be achieved. It is the fact that a completely new institution enjoys a “fresh start” free from corruption and other problems which may be present in existing institutions, greater public credibility, better security protections; greater political, legal and public accountability; and greater clarity in the assessment of its progress, successes and failures. The creation of separate institutions may also allow for faster

action against corruption.

From a political standpoint, the establishment of specialized institutions or agencies sends a signal that the government takes anti-corruption efforts seriously, but may generate competing political pressures from factions seeking similar priority for other crime-related subjects.

### **OMBUDSMEN**

Generally, the ombudsmen consist of individuals or agencies with very general powers which allow them to receive and consider a wide range of complaints which do not clearly fall within the jurisdiction of other more structured fora such as law courts or administrative bodies.

Ombudsmen fulfil several important functions. They provide a means for obtaining an impartial and independent investigation of complaints against government agencies and their employees. Usually, informal procedures are used to avoid the limitations of other mechanisms such as legal proceedings, which are out of reach for some complainants and impracticable for relatively minor complaints.

In some countries, ombudsmen have taken a more proactive role in studying the efficiency and operational policies of public institutions in an effort to prevent injustice, incivility or inefficiency. Ombudsmen may perform functions such as making recommendations or proposals to government departments or making public reports and recommendations.

### **MOBILIZING THE PUBLIC THROUGH EDUCATION AND AWARENESS**

An important achievement for any anti-corruption program is to empower the public with the opportunity to oversee the state, to raise public awareness about the negative effects of corruption and to help ensure the public's right to service by government. The purpose of this measure is to increase the checks and balances by guaranteeing independence of the judiciary, legislative and executive and by empowering the civil society to oversee the state activities (including the executive, legislative and the judiciary).

The importance of public trust in the government and its anti-corruption institutions is critical and often underestimated. Without a certain level of public trust, public complaints mechanisms are not going to work and witnesses are not going to come forward to facilitate prosecution of anti corruption cases in the courts.

### **THE ROLE OF MASS-MEDIA**

The role of mass-media in providing information which allow members of the public to be informed about governance and other important matters is unique. The essence of political accountability, for example, depends on the presence of an informed and independent media to keep the electorate informed about what elected officials have done or not done while in office, and what they propose to do if elected or re-elected. More generally, the mass media ensure transparency in public affairs in general and the control of corruption in particular.

### **ACCESS TO INFORMATION**

Access to information is a powerful mechanism of accountability. Through this mechanism, government operating practices are controlled, decision-making processes are made transparent, opportunities for corruption and/or conflict of interest will be commensurately minimized and potentials for abuses of power will be reduced.

Where government lays out its operating practices for all the public to see, citizens will have the information necessary to guard, and to enforce their basic rights. This transparency is a valuable tool in curtailing corruption. Many countries, both in the North and the South, recognize this fact and have enacted appropriate legislations.

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Fighting corruption requires the identification, and then elimination of its underlying causes and/or breeding ground. Moreover, it should be noted that

strengths and weaknesses of each of the elements above, relate to the strengths and weaknesses of other elements. Attention may then be focused on setting priorities and addressing significant weaknesses.

## **B- THE INTERNATIONAL LEVEL (NOT EXCLUDING REGIONAL COOPERATION)**

Some corruption is transnational in nature or has transnational elements, while other forms are purely national or domestic. Regardless of type, these still affect domestic capabilities, standards of living and even social, economic and political stability to the extent where they have become international concerns, particularly on the part of governmental, intergovernmental and nongovernmental entities responsible for international development.

At the international level, the UN Convention against Corruption -as the first legally binding international instrument on the issue- spells out how countries can improve their cooperation for combating corruption and marks a major step forward in international cooperation against the menace.

The UN Convention against Corruption provides a comprehensive framework for concerted action by State Parties to prevent and control corruption at the national level and to cooperate at the international level. The Convention also makes clear that in order to succeed in our efforts to eradicate corruption, the support and the involvement of both public and private sectors are crucial. It also encourages measures to promote the transparency and accountability of the international community.

## **THE UNITED NATIONS CONVENTION AGAINST CORRUPTION (MERIDA CONVENTION)**

There is no doubt that the fight against corruption has to be high on the agenda of nations and the international community. The adoption of the UN Convention against Corruption in October 2003 (and its entry into force on 14 December 2005), marked an historical achievement of the international

community. The Convention provides a global response to the problem and countries have shown their commitment and acute awareness of the severity of the problem. Till now, more than 140 countries have signed the Convention and 91 of them have already ratified it.

The main purposes of the Convention, as stipulated in its Article 1, are:

*(a) To promote and strengthen measures to prevent and combat corruption more efficiently and effectively.*

*(b) To promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery.*

*(c) To promote integrity, accountability and proper management of public affairs and public property.*

The Convention makes clear that eradicating corruption is a responsibility of all states, and it offers them a comprehensive set of standards they can apply to strengthen their regulatory regimes and institutions.

The adoption of the UN Convention against Corruption signals an important step forward in controlling the issue. It is indicative of an international consensus that corruption is no longer a local crime but has transnational dimensions. Therefore, all states shall work together to prevent and combat it in a comprehensive manner.

## **PRECONDITIONS FOR THE EFFECTIVE IMPLEMENTATION OF THE UNCAC**

Effective implementation of the UN Convention against Corruption depends on the effective implementation of its pillars. In a way, it could be said that the Convention is based on 5 important pillars as follows:

### **PREVENTION (CHAPTER 2):**

Corruption can be prosecuted after the fact, but first and foremost, it requires prevention. An entire chapter of the Convention is dedicated to prevention,

with measures directed at both the public and private sectors. These include model preventive policies, such as the establishment of anti-corruption bodies and enhanced transparency in the financing of election campaigns and political parties. States must endeavour to ensure that their public services are subject to safeguards that promote efficiency, transparency and recruitment bases on merit.

Prevention may include wide range of measures and activities aimed at studying, and finding practical ways and means to eliminate the underlying causes of corruption including: poverty; low income; moral and ethical deficiencies; inefficient and ineffective national monitoring mechanisms on the one hand, and taking appropriate measures, both legislative and administrative, on the other, to strengthen the system of checks and balances and fill any legal or other gap which may tempt the vulnerable public officials.

Once recruited, public servants should be subject to codes of conduct, requirements for financial and other disclosures, and appropriate disciplinary measures. Transparency and accountability in matters of public finance must also be promoted, and specific requirements are established for the prevention of corruption, in the particularly critical areas of the public sector, such as the judiciary and public procurement. Those who use public services must expect a high standard of conduct from their public servants. Preventing public corruption also requires an effort from all members of society at large.

### **CRIMINALIZATION (CHAPTER 3):**

The Convention requires countries to establish criminal and other offences to cover a wide range of acts of corruption, if these are not already crimes under domestic law. In some cases, states are legally obliged to establish offences; in other cases, in order to take into account differences in domestic law, they are required to consider doing so. The Convention goes beyond previous instruments of this kind, criminalizing not only basic forms of

corruption such as bribery and the embezzlement of public funds, but also trading in influence and the concealment and “laundering” of the proceeds of corruption. Offences committed in support of corruption, including money-laundering and obstructing justice, are also dealt with. Convention offences also deal with the problematic areas of private-sector corruption.

#### **INTERNATIONAL COOPERATION (CHAPTER 4):**

It should not be forgotten that, the criminalization of acts corruption, though a *sine qua non* of any suppressive campaign against this phenomenon, would have only limited outcome if not accompanied with measures for promoting international cooperation.

The Convention provides a unique legal framework and a comprehensive set of standards and measures for multilateral cooperation against corruption, including through mutual legal assistance for confiscation and extradition of illegally acquired properties. According to provisions of chapter 4 of the convention, countries agree to cooperate with one another in every aspect of the fight against corruption, including prevention, investigation, and the prosecution of offenders. Countries are bound by the Convention to render specific forms of mutual legal assistance in gathering and transferring evidence for use in court, to extradite offenders. Countries are also required to undertake measures which will support the tracing, freezing, seizure and confiscation of the proceeds of corruption.

#### **ASSET RECOVERY (CHAPTER 5):**

The provisions on asset recovery – the first of their kind and known as a fundamental principle of the convention – which require Member States to return assets obtained through corruption to the country from which they were stolen, is a major breakthrough. It will help tackle a pressing problem for many developing countries, where corrupt elites have looted and plundered national wealth that are now desperately needed by new governments to redress the social and economic damages inflicted on their societies.

Reaching agreement on chapter 5 of the convention has involved intensive negotiations, as the needs of countries seeking the illicit assets had to be reconciled with the legal and procedural safeguards of the countries whose assistance is sought. Several provisions specify how cooperation and assistance will be rendered. In particular, in the case of embezzlement of public funds, the confiscated property would be returned to the state requesting it; in the case of proceeds of any other offence covered by the Convention, the property would be returned providing the proof of ownership or recognition of the damage caused to a requesting state; in all other cases, priority consideration would be given to the return of confiscated property to the requesting state, to the return of such property to the prior legitimate owners or to compensation of the victims.

The success of this process may not be guaranteed unless all concerned state parties, particularly the countries of destination, be obligated to prevent bank secrecy from being used to obstruct criminal or administrative investigations that relate to crimes of corruption. The victim states, usually developing countries ones, shall also be afforded technical assistance and expertise they are in need of.

#### **TECHNICAL ASSISTANCE AND INFORMATION EXCHANGE (CHAPTER 6):**

Technical assistance has been a key component of the UN convention against corruption, and a strong link has been established between it and the implementation of the convention. Coordination of technical assistance is important in ensuring that overlapping is avoided and resources are used effectively. It should be noticed that as a backbone for technical assistance, the convention provides a structure that was previously not available to the international community.

#### **CONCLUSION**

The implementation of the UN Convention against Corruption relies on the effective implementation of its pillars. Moreover, special attention should be

given to the important following elements/preconditions:

- *A strong and committed political will is necessary for the successful implementation of the measures against corruption and to identify and eliminate corrupt values and behaviour.*
- *De-politicization of crimes of corruption is a sine qua non element of any successful legal fight against corruption.*
- *In fighting corruption building a shared understanding of the challenges, risks, scope and nature of corruption, is very crucial.*
- *Promoting ethics and developing a cultural against corruption is needed in all sectors of society, especially to encourage the public to become more involved in fighting the scourge.*
- *In fighting corruption more effectively, especial attention should be given to the prevention and criminalization of the corruption and promoting international cooperation to fight this menace.*
- *Preventing corruption is as complex as the phenomenon of corruption itself and a combination of accountability mechanisms and effective law enforcement mechanisms are needed for the success to overcome the menace.*
- *Effective asset-recovery provisions will support the efforts of countries to redress the worst effects of corruption while sending at the same time, a message to corrupt officials that there will be no place to hide their illicit assets.*
- *All states, especially the destination states, should be encouraged to strengthen the national monitoring mechanisms on their financial and monetary institutions in order to prevent laundering of proceeds of crimes and denying safe haven to officials guilty of corruption.*

- *The implementation of the Convention needs extensive legal and technical expertise and knowledge. The international community should work on appropriate ways and means to provide developing countries and countries with economies in transition with the necessary technical assistance. Fighting the menace would not be effective without reinforcing the technical and economic cooperation internationally.*

- *Corruption will not be overcome unless international and regional participation and cooperation is warranted. Therefore, greater accountability and transparency from states, international organizations, sub-regional and regional institutions and donor partners, is needed to fight the scourge more effectively.*

- *Obviously, no result could be achieved and permanently maintained without addressing the socio-economic roots of the crime of corruption and in this regard, closer cooperation between the members of the international community is needed. ❖*

## NOTES:

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