

ANTI-CORRUPTION HANDBOOK

FOR DEVELOPMENT PRACTITIONERS



MINISTRY FOR FOREIGN AFFAIRS OF FINLAND
Department for Development Policy

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INTRODUCTION

OBJECTIVE OF THE HANDBOOK – MAKING A DIFFERENCE BY PREVENTING CORRUPTION

Officials of the Finnish Ministry for Foreign Affairs, working in the field of development co-operation, face the challenge of making a difference in citizens' lives. At the same time, they have to manage the risks to development effectiveness arising from corruption and weak governance environments. While the risks caused by corruption, cannot be eliminated entirely, they can be mitigated by following the governance and anti-corruption (GAC) tools and guidance provided by the Handbook.

The objective of the Handbook is to provide conceptual and technical guidance to enable “development practitioners” to:

- › Become better equipped to effectively support the anti-corruption work in development co-operation;
- › Acquire useful tools to analyse the governance situations by using tools like governance assessments (GAs) and the United Nations Convention Against Corruption (UNCAC) and thus, to fulfil the potential provided by these tools, and promote political dialogue and operational activities;
- › Better contribute to the design and implementation of development programmes by mainstreaming governance and anti-corruption (GAC) issues and to better design and follow-up on specific anti-corruption programmes, NGO support, general budget and sector support;
- › Become familiar with the legislative and judicial means of strengthening governance and preventing corruption.

RATIONALE OF THE HANDBOOK

Corruption is an obstacle to development. Corruption distorts economic growth and threatens democracy, the rule of law and human rights. It is a concern for individuals, societies, the private sector and international organisations. The seriousness of corruption as a phenomenon is widely recognized. Preventing corruption is the responsibility of every civil servant in the Finnish Ministry for Foreign Affairs. It is not an issue of “will” but rather an issue of “must”.

The main idea of the Handbook is that preventing corruption requires a strengthening of governance. Addressing corruption through preventive lenses and tools and strengthening the preventive governance measures through political dialogue and operational activities, both at bilateral and multilateral forums, form the basis of Finnish anti-corruption work.

The more we address governance and anti-corruption issues in all Finnish publically-funded development programmes, the less we are confronted by corruption.

The Handbook is built around the question: What can we do to prevent corruption? rather than describing all the damage corruption can cause. Thus, the Handbook helps to build capacity in the way Finland implements its development co-operation.

STRUCTURE OF THE HANDBOOK

The Handbook is divided into four thematic parts:

PART I: ANTI-CORRUPTION FRAMEWORK FOR DEVELOPMENT CO-OPERATION.

Part I focuses on governance strengthening and corruption prevention: i) by concentrating on what is meant by concepts like governance, corruption and anti-corruption, ii) by introducing tools like governance assessments and UNCAC to analyse governance challenges and iii) by challenging the concept of political will.

PART II: TECHNICAL GUIDANCE FOR POLITICAL DIALOGUE AND OPERATIONAL ACTIVITIES. Part II addresses the key issues and principles of governance and anti-corruption to be followed in political dialogue and operational activities.

PART III: LEGISLATIVE AND JUDICIAL MEANS OF PREVENTING CORRUPTION. Part III firstly introduces the key legal means to be followed in strengthening governance and preventing corruption in development co-operation. Secondly, it addresses the wide array of international legal commitments to which Finland is party.

PART IV: THEMATIC APPROACH TO ANTI-CORRUPTION. Part IV provides key issues to be considered in relation to governance and anti-corruption in the following thematic areas: humanitarian assistance, aid for trade, gender equality and the rule of law.

INFORMATION SOURCES

The Handbook draws its contents from Finnish legislation, international conventions Finland and its partner countries are party to, international “rules of the game” agreed under the auspices of the EU, United Nations, World Bank and other international financial institutions and OECD/DAC. The Handbook consists of the commitments Finland has already agreed to follow and incorporates these commitments into the daily work of development practitioners.

The Handbook also contains operationally relevant material provided by U4 - Anti-Corruption Resource Centre - based in Bergen, Norway. This centre of excellence in the field of anti-corruption provides up-to-date information on anti-corruption programming and policy to the development community.

The information sources used in the Handbook and links to further information are found in Appendix 1.



PART I

ANTI-CORRUPTION FRAMEWORK FOR DEVELOPMENT CO-OPERATION

1 STRENGTHENING GOVERNANCE AS AN ENTRY POINT TO ANTI-CORRUPTION

This chapter highlights “the cornerstone” of this Handbook - Preventing corruption requires strengthening governance. Anti-corruption is one of the thematic areas of governance but in the context of the Handbook it plays the most crucial role. Addressing corruption through “preventive lenses and tools” and strengthening the preventive governance structures through political dialogue and operational activities both at bilateral and multilateral forums, form the basis of Finnish anti-corruption work.

We can only strengthen governance and anti-corruption structures by: i) understanding what is meant by concepts like governance, corruption and anti-corruption; ii) analyzing the main governance challenges by using tools like governance assessments and the United Nations Convention against Corruption (UNCAC) and iii) being able to define the role of political will in anti-corruption.

1.1 MAKING GOVERNANCE REAL

There is strong evidence of a link between the quality of a country’s governance system and its development performance. Problems of poverty and governance are inextricably linked like stated in the Millennium Declaration:

“11. We will spare no effort to free our fellow men, women and children from the abject and dehumanising conditions of extreme poverty, to which more than a billion of them are currently subjected. We are committed to

making the right to development a reality for everyone, and to freeing the entire human race from want. 12. We resolve, therefore, to create an environment — at the national and global levels alike — which is conducive to development and to the elimination of poverty. 13. Success in meeting these objectives depends, inter alia, on good governance within each country....”

Declarations like the Millennium Declaration are of good intent. However, one has to be aware, that there is a big difference between the role of governance in international development discourse and the role of governance in development co-operation. There is “a lot of talk” but “the talk” has not always ended in concrete work with results. So far, there has been too little attention on the delivery side of governance.

Corruption comes into the picture when there are too many unresolved governance problems, resulting from incompleteness of the process of building an effective and accountable state.

In order to help partner countries to develop capable and accountable states and institutions that can devise and implement sound policies, provide public services, set the rules governing markets, and combat corruption, Finland needs to focus on strengthening governance in its partner countries. Strengthening governance is the best way to prevent corruption and thus, failed states.

The real test on the success of governance work is how much it increases development effectiveness. In order to follow the delivery side of governance, one has to take governance into account in all development interventions:

- Governance assessments (GAs) both general and sectoral set priorities based on systematic diagnosis of country-specific governance and anti-corruption challenges to development effectiveness. Challenges caused by political will and status of ratification of international conventions can be analysed when participating actively in the drafting process of GAs;
- Programme/Project design and implementation should build on the results derived from the governance assessments in ways that provide opportunities to incorporate enhanced participation, rule of law, trans-

- parency, responsiveness, effectiveness, efficiency and accountability, and other strengthened checks and balances (including fiduciary controls and third party monitoring if feasible) into operational design;
- › Strengthening governance capacity of country systems and institutions enables governance and anti-corruption related development benefits to be realised across the spectrum of public action, not only in donor-financed projects. Thus, having an impact on the overall governance situation in the country.

1.2 LEGALLY BINDING GOVERNANCE

Even though good governance materialises in a myriad of contexts and definition varies by on the international organisation in question, there is something universal about the concept. The normative principles of governance (e.g. participation, rule of law, transparency, responsiveness, effectiveness, efficiency and accountability) are all found in legally binding international conventions ratified by Finland and also by the partner countries of Finland.

Good governance as a concept is not directly a topic in itself in any legally binding international instrument but there is a wealth of United Nations human rights instruments of direct relevance and applicability to questions of governance. UNCAC has added a wealth of new stipulations on governance to the already existing international agreements.

The normative principles of good governance

PARTICIPATION by both men and women is a key cornerstone of good governance. Participation may be either direct or through legitimate intermediate institutions or representatives. It is important to point out that representative democracy does not necessarily mean that the concerns of the most vulnerable in society would be taken into consideration in decision making. Participation needs to be informed and organised. This means freedom of association and expression on the one hand and an organised civil society on the other.

RULE OF LAW. Good governance requires fair legal frameworks that are enforced impartially. It also requires full protection of human rights, particularly those of minorities. Impartial enforcement of laws requires an independent judiciary and an impartial and incorruptible police force.

TRANSPARENCY means that decisions are taken and the enforcement thereof is carried out in a manner that follows rules and regulations. It also means that information is freely available and directly accessible to those who will be affected by such decisions and the enforcement thereof. It also means that enough information is distributed and that it is provided in easily understandable forms and media.

RESPONSIVENESS. Good governance requires that institutions and processes try to serve all stakeholders within a reasonable timeframe.

EFFECTIVE AND EFFICIENT. Good governance means that processes and institutions produce results that meet the needs of society while making the best use of resources at their disposal. The concept of efficiency in the context of good governance also covers the sustainable use of natural resources and the protection of the environment.

ACCOUNTABILITY is a key requirement of good governance. Not only governmental institutions but also the private sector and civil society organisations must be accountable to the public and to their institutional stakeholders. Who is accountable to whom varies depending on whether decisions or actions taken are internal or external to an organisation or institution. In general an organisation or an institution is accountable to those who will be affected by its decisions or actions. Accountability cannot be enforced without transparency and the rule of law. ■

1.3 DEFINING GOVERNANCE

If the national economic, political and administrative systems in the poor countries were working properly and governance structures were aimed toward the common good, much less external aid would be needed. No amount of external assistance can help to reduce poverty or narrow the gap between the rich and the poor if:

1. governments and public servants are not taking up the responsibility and are not accountable;
2. if national governance structures are weak and proper institutional and legal frameworks are not in place.

One of the leading interpretations of governance is the definition of UNDP. The interesting part of this definition is that governance becomes an issue for everyone and not just a remote issue reserved for political leadership and the executive elite. UNDP defines governance as:

“The exercise of political, economic and administrative authority in the management of a country’s affairs at all levels. Governance comprises the complex mechanisms, processes and institutions through which citizens and groups articulate their interests, mediate their differences and exercise their legal rights and obligations.”

HOW CAN ONE DEFINE WHAT IS GOOD GOVERNANCE? As mentioned before, the normative concepts make good governance a legally binding issue but they also make it possible to define what is good governance. Good governance is:

“participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and follows the rule of law. It assures that corruption is minimized, the views of minorities are taken into account and that the voices of the most vulnerable in society are heard in decision-making. It is also responsive to the present and future needs of society” (UNDP, 2004).

BAD GOVERNANCE refers to the undesirable (i.e. self-interested) conduct of a government combined with a negative performance in making and implementing political and economic decisions. This includes corruption and oth-

er forms of mishandling public resources. Bad governance is used to refer to a lack of transparency and also to smothering of public participation.

POOR GOVERNANCE, on the other hand, is used to refer to the lack of capacity, weak institutions or in general lack of knowledge and experience in managing public resources. Sometimes, particularly in the context of fragile states and conflict prone societies the term weak governance is used instead.

WEAK GOVERNANCE is ambiguous, as it has been used when governments are either unwilling or unable to assume their responsibilities in relation to responsible and responsive public administration and in protecting human rights. The use of all these terms is sometimes overlapping and not always clear-cut.

1.4 GOVERNANCE AND ANTI-CORRUPTION

Governance and corruption are often used synonymously. But they are quite different concepts and conflating them can be very damaging. While governance comprises the complex mechanisms, processes and institutions through which citizens and groups articulate their interests, mediate their differences and exercise their legal rights and obligations, corruption is an outcome and a failure of this complex system.

Sometimes an exclusive focus on corruption causes simple-minded anti-corruption initiatives, which neglect the complex challenge of strengthening national governance systems. Thus, the focus has to be in strengthening governance structures of the partner country, but also in building capacity in the way Finland implements its development co-operation.

Anti-corruption work is an essential part of good governance work. Anti-corruption work includes activities, which strengthen not only national but international governance structures. It normally strengthens checks and balances institutions like parliaments, independent oversight agencies, the judicial system, a free press, and democratically accountable local institutions. The United Nations against Corruption (UNCAC) is a good example of an international level initiative, which promotes transparency and accountability - the key principles of good governance.

Anti-corruption work can take many different forms in development operations since the checks and balances structures are not always the national anti-corruption structures, but structures which have been incorporated into the development programme. Anti-corruption activities at the programme level can take the following forms, for example: supporting the formulation of the legal framework, sound public financial management, inclusive structures for participation in decision-making or involving independent financial agents to follow the financial management of the programme.

1.5 GOVERNANCE AND AID EFFECTIVENESS

The Paris Declaration (2005), the 2008 Accra High Level Forum on Aid Effectiveness and the 2011 Busan High Level Forum on Aid Effectiveness show many entry points for linking with the governance agenda in general and especially, with the anti-corruption agenda. Among other things, the Paris Declaration insists on results-based reporting and assessment. The Accra Agenda takes this further towards pro-poor development being the ultimate goal for results-based management. The Agenda also makes clear that transparency and accountability are at the core of the aid effectiveness agenda.

National governance systems consist of many institutions and actors, which do not only need to have the capacity to perform their functions, but who also need to be accountable to someone if governance is to be effective. In addition, transparency is an essential cross-cutting aspect of the governance system, contributing to the efficacy of both the actors and the accountability relationships. Transparency is, of course, also important if a governance system is to be monitored regarding its effectiveness to produce development results.

All this not only shows the relevance of good governance for the aid effectiveness debate. It also puts a convention like UNCAC at the centre of the Paris Declaration and re-emphasises UNCAC as a good governance convention, not a convention solely focused on anti-corruption. UNCAC is not only a technical guide for targeted anti-corruption measures, but also a comprehensive development and governance framework. In order to know how much governance matters in development, one needs to understand the multifaceted phenomenon of corruption.

KEY ISSUES TO BE CONSIDERED

- › **STRENGTHENING GOVERNANCE.** Addressing corruption through “preventive lenses and tools” and strengthening the preventive governance structures through political dialogue and operational activities both at bilateral and multilateral forums, form the basis of Finnish anti-corruption work.
- › **DELIVERY SIDE OF GOVERNANCE.** The real test on the success of governance work is how much it increases development effectiveness. In order to follow the delivery side of governance, one has to take governance into account in all development interventions.
- › **GOOD GOVERNANCE AS A LEGAL RESPONSIBILITY.** Good governance as a concept is not directly a topic in itself in any legally binding international instrument but there is a wealth of international legal instruments of direct relevance and applicability to questions of governance.
- › **CONCEPTUAL UNDERSTANDING.** What is meant by governance, good governance and anti-corruption?

2 UNDERSTANDING THE PHENOMENON OF CORRUPTION

Understanding the phenomenon of corruption is essential in preventing corruption. The following chapter provides information about the definition of corruption and about the different types and forms it takes. The chapter also highlights the responsibility of foreign ministry officials in preventing corruption.

2.1 RESPONSIBILITY TO PREVENT

It is not only a moral responsibility for foreign ministry officials to try to prevent corruption. Neglecting this responsibility can have legal implications. In Finnish legislation corruption is a criminalised act and therefore naturally, bad governance.

"...let us all do our part to foster ethical practices, safeguard trust and ensure no diversion of the precious resources needed for our shared work for development and peace."

Secretary-General Ban Ki-moon on International Anti-Corruption Day 9 December 2010.

2.2 ANTI-CORRUPTION FOR DEVELOPMENT

Corruption is an obstacle to development. It is a crime that works globally, crossing boundaries. Corruption distorts business and economic growth, increases environmental degradation and threatens democracy, the rule of law and human rights. It is a concern for individuals, societies, companies, governments and international organisations alike.

Corruption requires two sides. There is always a supply and a demand side, whether out of greed or out of need. The impact of corruption extends beyond the people involved in the corruptive activity. Corruption may reveal itself as unfinished bridges, ill-equipped schools and ultimately as lives lost.

Although corruption works globally, it impacts low-income people the most. People on low incomes pay relatively the highest price as a result of corruption. Corruption can affect them directly by impeding access to public services, such as water, health and education. It affects them indirectly too, by diverting resources away from investments in infrastructure and social services.

2.3 DEFINING CORRUPTION

There is no single, comprehensive or universally accepted definition for corruption. Attempts to develop such a definition invariably encounter legal, criminological and, in many countries, political problems.

In academic corruption literature a distinction is often made between classic and modern conceptions of corruption. The classic conception of corruption dates back to Aristotle's and Plato's times and has a moral meaning: it refers to a moral decadence of human and society, which is caused by an excessive concentration of power. The modern meaning of corruption is narrower, more value-free, and is based on the characteristic of a modern state, the separation of public and private. It is understood as a twisted relationship between state and society.

The current definitions are based mainly on the modern conceptions of corruption. The most definitions of corruption share an emphasis on the

abuse of public power or position for personal advantage, with an over-emphasis on the public office.

Transparency International (TI) defines corruption as “the abuse of entrusted power for private gain”. This definition of corruption represents a broader phenomenon where private agents also share responsibility with public servants. Corruption represents a challenge to private sector as well as to public sector.

TI further differentiates between “according to rule” corruption and “against the rule” corruption. Facilitation payments, where a bribe is paid to receive preferential treatment for something that the bribe receiver is required to do by law, constitute the former. The latter, on the other hand, is a bribe paid to obtain services the bribe receiver is prohibited from providing.

When viewing corruption as an abuse of entrusted power for private gain, many acts which are unethical (and regarded as corrupt) may not necessarily be illegal. For example, big private companies may play an undue role when influencing and shaping public policies and laws of developing countries.

To further develop the concept, corruption can be defined more neutrally as “the privatisation of public policy”, in which public policy is seen as including access to public services. Thus within such a definition, the responsibility resides with both those who exert undue influence, and those who are unduly influenced.

2.4 DIFFERENT TYPES OF CORRUPTION

Corrupt practices take place in all levels of society. The practices vary from everyday petty corruption such as illegal school payments to outrageous state captures. The main corruption types can be divided into bureaucratic corruption, political corruption and state capture. The causes for different types of corruption differ as well; corruption can be due to greed, need, opportunity, lack of punishment, lack of enquiry or follow up, peer pressure, and habit.

- › **BUREAUCRATIC, ADMINISTRATIVE OR “PETTY” CORRUPTION** is everyday corruption. It takes place at the implementation end of politics, where the public meets public officials. Petty corruption is described as “survival corruption”, a form of corruption which is pursued by under-paid agents who depend on extra-payments to feed and house their families. Although petty corruption involves small sums of money, the amounts are not “petty” for the individual adversely affected. Petty corruption challenges the low income members of society, who may experience bribes regularly in their encounters with public administration and services such as police, hospitals etc.

- › **GRAND AND HIGH LEVEL CORRUPTION** takes place at the policy formulation end of politics. It refers not so much to the amount of money involved as to the level at which it occurs - where policies and rules may be unjustly influenced. The kinds of transactions that attract grand corruption are usually large in scale. Political corruption is in some instances used synonymously with grand and high level corruption, referring to the misuse of entrusted power by political leaders. In others it refers specifically to corruption within the political and electoral processes.

- › **STATE CAPTURE** is recognised as a most destructive and intractable corruption problem. It is a phenomenon in which outside interests (private sector, mafia network etc.) are able to bend state laws, policies and regulation to their benefit through corrupt transactions with public officers and politicians.

2.5 MAIN FORMS OF CORRUPTION

Corruption is susceptible to variations across time and space. The main forms of corruption are bribery, extortion, favouritism, embezzlement, conflict of interest and fraud. They take place in petty as in grand corruption, varying from legal to illegal practices. Corruptive transactions extend beyond financial practices to “non-financial corruption” such as nepotism, sexual exploitation and abuse, coercion and social or political gain.

- › **BRIBERY** is the act of offering money or other valuables in order to persuade someone to do something for you. Bribery is corruption by definition. Bribes are also called kickbacks, payola, hush money, sweeteners, protection money, boodle, gratuity etc. Bribery is widely criminalised through international and national laws.
- › **EXTORTION** is the unlawful demand or receipt of property or money through the use of force or threat. A typical example of extortion would be when armed police or military officers exact money for passage through a roadblock. Synonyms include blackmail, bloodsucking and extraction.
- › **FAVOURITISM** refers to the normal human inclination to prefer acquaintances, friends and family over strangers. It is not always a form of corruption. However, when public (and private sector) officials demonstrate favouritism to unfairly distribute positions and resources, they are guilty of cronyism (friends) or nepotism (family), depending on their relationship with the person who benefits.
- › **EMBEZZLEMENT** is the misappropriation of property or funds legally entrusted to someone in their formal position as an agent or guardian.
- › **CONFLICT OF INTEREST** arises when an individual with a formal responsibility to serve the public participates in an activity that jeopardises his or her professional judgment, objectivity and independence. Often this activity (such as a private business venture) primarily serves personal interests and can potentially influence the objective exercise of the individual's official duties.
- › **FRAUD** is economic crime involving deceit, trickery or false pretences, by which someone gains unduly. An actual fraud is motivated by the desire to deceive another to his harm, while constructive fraud is a profit made from a relation of trust. Synonyms: Swindle, imposition, deceit, double-dealing, cheat, and bluff.

KEY ISSUES TO BE CONSIDERED

- › **LEGAL RESPONSIBILITY TO PREVENT CORRUPTION.**

- › **MULTIPLE NATURE OF CORRUPTION** including:
 - definition of corruption;
 - different types of corruption;
 - main forms of corruption.

- › **UNDERSTANDING THE PHENOMENON OF CORRUPTION** will assist in:
 - understanding the country context;
 - preventing corruption;
 - in detecting and reporting corruption.

3 FRAMEWORK FOR MONITORING GOVERNANCE

Monitoring developing country governance has become a growth industry. There is now a broad consensus among policymakers and academia that good governance is an important factor for development and thereby, for the effectiveness of development assistance. This in turn has increased demand for monitoring the quality of governance.

While a multitude of motivations and purposes lie behind decisions to carry out governance appraisals, most assessments are used as a planning tool to enhance the effectiveness of aid. In addition to that, governance assessments act as “early warning systems” to alarming governance situations and provide an opportunity to assess the Finnish response to the situation.

Since the main governance assessments and indicators are used in all Finland’s partner countries, there is the opportunity to consult other Finnish partner country embassies to see whether they have experienced similar governance challenges in their respective countries. Thus, improving the cohesion of Finnish responses to changes in governance.

This chapter addresses the challenge of assessing developing country governance:

- › By presenting the different governance assessments and the indicators and indices;
- › By identifying the key governance assessments and indicators to be used at the country level;

- › By highlighting the existing political commitments for the use of governance assessments and the opportunities they provide for use in development co-operation.

3.1 GOVERNANCE ASSESSMENTS

There are several types of governance assessments. Some are studies of political economy and drivers of change at state level, while others are more focused on particular issues that are crucial from a governance perspective, such as human rights, corruption, accountability, capacity, conflict or transparency, within the country context. Studies of institutional quality and functioning or that examine capacity issues within the enabling environment (for instance in the context of poverty reduction, for specific sectors such as health or education, or linked to organizations) are also common.

The observed tendency of proliferation of the various governance assessments and limited ability of external parties (e.g. donors) to build on each other's initiatives is a critical issue that should be addressed by development partners. Development partners might have legitimate reasons for carrying out individual and varied governance assessments linked to their individual agendas and aid portfolios.

It has to be remembered that a myriad of governance assessments can lead to confusion at a country level as the results of these assessments can vary. As an end result there can be a situation that there is no harmonised approach to governance among development partners which complicates both political dialogue and operational activities.

In light of the Paris Declaration, Finland has not developed a governance assessment of its own. The clear policy line is that the first priority is given to the common EU tool on assessing governance. This approach is the consequence of the active role Finland played, in creating the harmonised approach to governance, during its EU presidency in autumn 2006.

3.2 DIFFERENT CATEGORIES OF GOVERNANCE ASSESSMENTS

There are a number of different ways to distinguish between different groups and categories of assessments. The option used here is to distinguish between the following two categories:

› ASSESSMENTS:

- External assessments (general and sectoral): EU Governance Profile and the World Bank Country Policy and Institutions Assessment;
- Peer-review assessment: African Peer Review Mechanism.

› INDICATORS/INDICES:

- The World Bank Institute: The Worldwide Governance Indicators;
- Transparency International: The Corruption Perceptions Index, the Global Corruption Barometer and the Bribe Payers Index.

Both the World Bank initiated governance indicators and the African Peer Review Mechanism play an important role in monitoring the partner country's governance situation. However, Finland does not have a role in the compilation process of these assessments. The only governance assessment, in which Finland can have an active role, is the EU governance assessment.

The value of indices of Transparency International (TI) lies in their ability to raise awareness regarding corruption and advocate anti-corruption action, but they can only give some indication on the corruption trends at a country level.

3.3 EXTERNAL ASSESSMENTS

3.3.1 Governance profile of the European Union

The EU "Governance Initiative" is an incentive mechanism that gives the ACP partner countries (The African, Caribbean and Pacific group of States - Georgetown Agreement 1975) access to additional funding on

the basis of their commitment to deliver governance reforms. There are several stages to this process. The EC first prepares together with the EU Member States a "Governance Profile", which provides an overview of governance in the country. Partner country governments are then requested to put forward a "Governance Action Plan" detailing the ongoing and planned initiatives designed to address priorities identified in the Governance Profile.

As stated in the Council Conclusions in October 2006 the EU Member States need to actively cooperate in the development of the profiles:

"15. WELCOMES the use of governance profiles based on current situation and on trends; STRESSES however that the profiles should reflect national development plans and indicators; INVITES the Commission and the Member States within their respective competences to actively cooperate in the development of the profiles and assessment criteria both in the headquarters and in the field with a view to their possible use also by the Member States in their bilateral strategies, policies and programmes;"

The EU governance profile is a country specific joint programming tool constructed by the European Commission and the EU member states (missions) present in the country. Its main objective is to help identify specific areas of cooperation (weaknesses) and agreeing on benchmarks and targets for reform (Government commitments).

The governance profile does not necessarily need to be completed jointly with the partner country but its contents should be shared (but not negotiated and agreed) with the partner country. The EU Member States need to be associated in the drafting process. So the nature of the profile as a governance assessment is purely external. This does not mean that the drafting process should not be widely consultative in nature in the country in question.

The governance profile should provide a qualitative, extensive and detailed assessment that helps identifying the main constraints in governance related areas in the broad sense. It is not meant to be exhaustive but focuses on some core areas of governance, which

are in harmony with the World Bank Institute worldwide governance indicators:

1. Political/Democratic Governance;
2. Political Governance/Rule of Law;
3. Control of Corruption;
4. Government Effectiveness;
5. Economic Governance;
6. Internal and External Security;
7. Social Governance;
8. International and Regional Context;
9. Quality of Partnership.

The governance profile can also be used to identify sectoral performance indicators, particularly when governance is a focal area. It will help to assess the extent to which commitments undertaken by partner country are relevant and credible. For example in the governance sector, the profile can identify the following issues:

- › **RULE OF LAW** (constitutional development, police performance, judicial system, legislative framework, human rights, etc.);
- › **DEMOCRACY DEVELOPMENT** (public participation, electoral system, freedom of speech/media freedom etc.);
- › **FINANCIAL MANAGEMENT** (the state of the public financial management systems, the institutional and legal framework for oversight and audit authorities, efficiency and transparency of income revenue system and redistribution of public funds, etc.);
- › **GENDER** (the legal framework, political participation and its support, opportunities in the public and private sector, etc.).

As in any wide-scale exercises, the drafting process and use of governance profiles have not always been consistent in different countries and therefore there have been some ‘hiccups’ in the process. One of the concerns raised has been the lack of transparency in the process in relation to the EU member states and to the partner countries. Thus, some mem-

ber states have felt that the process at a country level has not followed “the spirit of Council Conclusions”. In some countries the European Commission (EC) has asked for wide member state participation in constructing the governance profile, while in others the process has been more ‘internal’ within the Commission. No matter what is the future of the governance profile, the EU should have some kind of a common tool to assess governance at the country level.

The Finnish embassies participating in the drafting process of governance profiles have to emphasise the need to follow the principles agreed in the Council Conclusions. The embassies present in the partner countries in which governance profile or possible other common EU assessment is used should to participate in the process, stressing the following principles:

- › **TRANSPARENCY AND INCLUSIVENESS OF THE PROCESS.** Governance profile is an external assessment but it is not meant to be “secret” in nature. To make sure that the partner countries are committed to the reform processes, they need to be aware of the contents of the profile. This gives any governance assessment more local credibility and national ownership;
- › **WIDE CONSULTATION OF THE LARGER SOCIETY IN THE DRAFTING PROCESS.** In order to get credible results out of any governance assessment, “the voice of people” must be heard. The civil society, private sector and specifically, people in the most vulnerable position, need to be heard in the drafting process;
- › **DO NO HARM – HARMONISED EU APPROACH TO GOVERNANCE.** To avoid confusion that follows when the various EU member states have very different approaches and views on governance, all the EU countries present in the partner country need to be involved in all the stages of the common governance assessment process. Since some of the EU member states have governance assessments of their own, it is crucial that there is harmony between individual assessments drafted by the EU member states and the EU assessment. This guarantees a consistent and harmonised European view on the main governance issues in the partner country.

3.3.2 Governance assessments and indicators of the World Bank

The World Bank produces two sets of governance assessments/indicators of major importance. One is the Country Policy and Institutions Assessment (CPIA), which is produced annually by the Bank's own staff i.e. its country teams, to assess the quality of Bank borrowing countries' policy and institutional frameworks for fostering poverty reduction, sustainable development and effective use of development assistance.

The other is the most comprehensive set of governance indicators publicly available - the worldwide governance indicators - published bi-annually since 1996 by the World Bank Institute (WBI).

3.3.3 Country Policy and Institutions Assessment (CPIA)

In the late 1970s the World Bank began using systematic country assessments to guide the allocation of International Development Association (IDA) resources. By the late 1990s the CPIA had evolved to something close to its current format. A further round of fine-tuning came in 2004, to implement suggestions by an independent panel of outside experts.

CPIAs examine policies and institutions, not development outcomes, which can depend on forces outside a country's control. The CPIA looks at 16 distinct areas grouped into four clusters. For each criterion, very detailed guidelines are provided to help World Bank staff to score individual countries along an absolute 1-6 scale.

Governments have been recently informed of the assessment process, which is increasingly integrated into processes of World Bank - government dialogue. From the summer 2006 onwards, the Bank discloses to the public numerical rating for each criterion.

The Public Sector management and institutions cluster serves as a major input for the so called "governance factor" which plays a critical role, in addition to the country overall CPIA rating, in the allocation of Bank Funds.

The CPIA's four clusters and 16 criteria:

A. ECONOMIC MANAGEMENT CLUSTER

1. Macroeconomic management
2. Fiscal policy
3. Debt policy

B. CLUSTER ON STRUCTURAL POLICIES

4. Trade
5. Financial sector
6. Business regulatory environment

C. CLUSTER ON POLICIES FOR SOCIAL INCLUSION/EQUITY

7. Gender equality
8. Equity of public resource use
9. Building human resources
10. Social protection and labor
11. Policies and institutions for environmental sustainability

D. PUBLIC SECTOR MANAGEMENT AND INSTITUTIONS CLUSTER

12. Property rights and rule-based governance
13. Quality of budgetary and financial management
14. Efficiency of revenue mobilization
15. Quality of public administration
16. Transparency, accountability, and corruption in the public sector ■

As with all assessments and indicators, the CPIA has its limitations. The assessments are compiled by World Bank officials. Even if, experts in their field and well informed about individual countries, staff sometimes may not be aware of the intimate details of how things really work in a country.

Some of the criteria do not lend themselves readily to an ordinal scale of quality—even though the criteria were developed to ensure that, to the extent possible, their contents are developmental neutral, that the higher

scores do not set unduly demanding standards, and can be attained by a country that, given its stage of development, has a policy and institutional framework that strongly fosters growth and poverty reduction.

Staff assessments can be affected by the fact that the CPIA forms the basis for allocating IDA resources. To address these limitations and ensure consistency across countries, the World Bank goes through an elaborate multistage process for scoring the CPIAs. The process includes an initial round of benchmarking by a global team drawn from across the World Bank, subsequent rounds within operating regions using the benchmarked countries as guideposts, and a further round of validation by central units.

3.4 PEER-REVIEW ASSESSMENT

3.4.1 African Peer Review Mechanism (APRM)

African countries, which have completed the African Peer Review Process, the EU governance profile will be based on the report of this review process. In addition, the EU tries to support the APRM process as stated in the Governance Conclusions of the Council:

“16. WELCOMES the African Peer Review Mechanism (APRM) as a participatory self assessment tool for encouraging reforms, mutual learning and strengthening ownership and CONFIRMS the readiness of the EU to continuing support to the process and the reforms it generates at the national level; INVITES the Commission and Member States to exchange information on financial support provided to the APRM process and requests the Commission to regularly monitor and report on EU support to the APRM;”

African states have actually undertaken a number of commitments to respect good governance since the African Union (AU) replaced the Organization of African Unity (OAU) in 2002. By the constitutive action of the new African Union, African States are bound to promote human rights, democratic principles and institutions, popular participation and good governance. More specific state commitments in relation to good governance are included in the framework of the New Partnership for Africa’s Development (NEPAD) and the African Peer Review Mechanism (APRM).

APRM is a self-monitoring mechanism that African states themselves agree to adopt. Its mandate is to ensure that the policies and practices of participating countries conform to the agreed values, codes and standards in political, economic corporate governance as well as in socio-economic development. The APRM has then regional and national ownership. It is not a process where a government would assess its own performance, but it is a demand driven self-assessment by the people of African countries. Thus, it can give a more realistic assessment of the governance issues, problems and gaps in the countries under review. It also provides local suggestions on how to improve the situation.

The conduct of the APRM is a five-stage process that results in two reports: a self-assessment report, completed in the country concerned through a participatory process (led by the government, but with support of the NEPAD and a team of experts); and a peer review report, compiled by members of the APRM ‘panel of eminent persons’, the APRM Secretariat and technical advisers.

The self-assessment report covers four main areas:

1. political governance and democracy;
2. economic governance and management;
3. corporate governance;
4. socio-economic development. These reports are complemented with a National Programme of Action, which identifies actions for the government to undertake in order to improve the situation.

When fully consultative, the APRM reports can give a useful framework for political dialogue. It identifies local governance challenges, and if the planned development programmes are anchored to the National Programmes of Action, the whole process can strengthen national ownership of development planning. There is a danger that the whole process remains as a data collection exercise if the related plan of action is not taken forward in earnest and does not receive the support needed from the government or from the development partners.

In general the whole process should be taken forward more consistently and its support and monitoring needs a very careful holistic approach.

The National Programmes of Action need to be much better integrated to the wider country assistance for good governance, and development in general. The development partners need to take a holistic approach to the process and the external support needs to be well coordinated and harmonised with the other related development assistance programmes. The APRM process needs to be seen as an overarching framework that will be integrated into the on-going work and understood in the prevalent political context, not as a somehow separate process of assessment that may be acknowledged but lacks follow up and implementation.

Kenya and APRM

Kenya signed the MoU committing itself to a review by the APRM in 2003 as a result of President Kibaki's campaign for 'zero tolerance on corruption'. The APRM process in Kenya took place during the same period, as there was enthusiasm for reform and a re-energised constitutional review process going on. Consequently, many relevant constitutional issues were also considered in the self-assessment.

Of the self-assessments undertaken by the first four countries to engage in the APRM process (Kenya, Ghana, Mauritius and Rwanda), Kenya's process has been rated as perhaps the most widely consultative. It gave Kenyan citizens an opportunity to voice their concerns. During the process, workshops were held throughout the country and a wide range of opinions on the state of governance in Kenya, were canvassed.

There were some delays in the completion of the self-assessment report due to tensions over the management of the National Governing Council (NGC) that was supposed to guide the implementation of the peer review process independently. The civil society was widely involved. However, as new corruption scandals emerged, criticism was less welcomed by the government. The government funding for the process was also very slow and seemed inadequate.

The APRM panel's country review report critically analysed the weakness of state institutions and related ethnic tensions, conflicts, human rights violations and persistent socio-economic inequality. The report identified the





deficiencies in the judicial system and the rule of law. It acknowledged the problems of drugs trafficking, illegal small arms and conflicts over natural resources. It brought up the poor police performance and the security threats by the militia. It also noted the election violence and partiality of the electoral system as well as the need for wider civic education. The report published did not shy away from calling for difficult decisions to be made and implemented. The final report was made widely available to the Kenyan people.

The report was accompanied by the National Programme of Action, which was intended to tackle the gaps identified. In Kenya this programme was tied up with the already on-going reforms in the public service and justice sector. The additional element was to empower Kenyan citizens to hold the government accountable to its commitments and to provide a forum to continuing dialogue with the government. The purpose was to continue and institutionalise the dialogue between citizenry and government but this did not succeed in taking place.

While the process itself had national ownership, development partners (SIDA and DfID) had set up a basket fund administered through the UNDP to support the process. Also the World Bank supported some of the activities. While the government of Kenya gave financial, technical and political support to the process, there seemed to be delays in getting funds, or the funding was insufficient. As a result, many development partners remained skeptical about the political will and the coordination of the full process.

The support for the National Programme of Action was scarce as the government did not come up with a comprehensive and sustainable plan to implement it. There was no overarching approach that would have brought together the already on-going reform programmes such as the constitutional review, justice sector reform, and public sector reform with the suggested continuous 'citizen's evaluation' of the progress.

Kenyan APRM reports clearly brought out the main governance concerns and frustrations that the Kenyan people had before the 2007 elections which were followed up by serious violence across the country. The report predicted the fears of flawed elections and their potentially violent consequences. Some of the people's concerns were related to lack of transparency, widespread cor-





ruption and impunity, land ownership, and general historical and structural injustices, lack of public trust and failures of the electoral system. If these concerns that were brought up in the report had been more closely followed up and the related reforms with public evaluation been set in motion more effectively, the post-election violence could possibly have been avoided.

LESSONS LEARNT:

1. The development partners referred to the report in political dialogue with the government. This discussion was not constructive as the Government of Kenya praised itself for going through 'this widely consultative APRM process', while the development partners were focusing on the implementation of the plan of action without consistent commitment to support such a programme.
2. The government and the development partners were not able to use this unique opportunity to take a holistic and coordinated approach to governance reforms; an approach that would combine the nationally driven self-assessment and programme of action with the already started (and often externally driven) related reform programmes.
3. The government failed to make use of the opportunity of returning the public trust, by providing people with a forum for continuous open dialogue. This same forum could have also provided also very useful national assessment mechanism. ■

3.5 INDICATORS AND INDICES

It is not possible for one set of indicators or indices to measure the multi-dimensional aspects of governance and corruption in a reliable and objective manner. The value of indicators and indices lies in their ability to raise awareness on governance and corruption and advocate anti-corruption action, make cross-country comparisons, conduct statistical analysis and assist in establishing correlations between corruption and other variables.

3.5.1 Worldwide governance indicators

The Worldwide Governance Indicators (WGI) represent a long-standing research project to develop cross-country indicators of governance. The WGI consist of six composite indicators of broad dimensions of governance covering over 200 countries since 1996.

Six core dimensions of governance measured by the WGI:

1. **VOICE AND ACCOUNTABILITY:** capturing perceptions of the extent to which a country's citizens are able to participate in selecting their government, as well as freedom of expression, freedom of association, and a free media.
2. **POLITICAL STABILITY AND ABSENCE OF VIOLENCE/TERRORISM:** capturing perceptions of the likelihood that the government will be destabilised or overthrown by unconstitutional or violent means, including politically-motivated violence and terrorism.
3. **GOVERNMENT EFFECTIVENESS:** capturing perceptions of the quality of public services, the quality of civil service and the degree of its independence from political pressures, the quality of policy formulation and implementation, and the credibility of the government's commitment to such policies.





4. **REGULATORY QUALITY:** capturing perceptions of the ability of the government to formulate and implement sound policies and regulations that permit and promote private sector development.
5. **RULE OF LAW:** capturing perceptions of the extent to which agents have confidence in and abide by the rules of society, and in particular the quality of contract enforcement, property rights, the police, and the courts, as well as the likelihood of crime and violence.
6. **CONTROL OF CORRUPTION:** capturing perceptions of the extent to which public power is exercised for private gain, including both petty and grand forms of corruption, as well as “capture” of the state by elites and private interests. ■

Governance indicators are based on several hundred variables obtained from 31 different data sources, capturing governance perceptions as reported by survey respondents, non-governmental organisations, commercial business information providers, and public sector organisations worldwide.

The WGI project defines governance as the traditions and institutions by which authority in a country is exercised. This includes how governments are selected, monitored and replaced; the government’s capacity to effectively formulate and implement sound policies and provide public services; and the respect of citizens and the state for the institutions that govern economic and social interactions among them.

Perceptions of governance in the WGI data is drawn from a wide variety of sources and then organised into six clusters corresponding to the six broad dimensions of governance listed above. For each of these clusters a statistical methodology is used known as an Unobserved Components Model to (i) standardise the data from these very diverse sources into comparable units, (ii) construct an aggregate indicator of governance as a weighted average of the underlying source variables, and (iii) construct margins of error that reflect the unavoidable imprecision in measuring governance. It is believed that this is a useful way of organising and summarising the very large and disparate set of individual perceptions-based indicators of

governance that have become available since the late 1990s. Moreover, by constructing and reporting explicit margins of error for the aggregate indicators, users are enabled to avoid over-interpreting small differences between countries and over time in the indicators that are unlikely to be statistically - or practically - significant.

The Worldwide Governance Indicators are a useful source to follow the status and trends of governance in in Finland's partner countries.

➤ **FOR FURTHER INFORMATION ONLINE:** www.govindicators.org

3.5.2 Corruption indices of Transparency International

Transparency International has wide range of corruption index tools regarding levels of corruption, both at global and local levels. TI led the global measurement of corruption by launching Corruption Perceptions Index (CPI) in 1995.

The main indices of TI to measure corruption globally are the Corruption Perceptions Index (CPI), the Global Corruption Barometer (GCB) and the Bribe Payers Index (BPI). CPI is the most well-known corruption survey, measuring corruption in public sector, determined by experts, while GCB takes into account the general public voice and studies public attitudes and experience of corruption. BPI focuses on the supply side of corruption and the likelihood of firms from the world's industrialised countries to bribe abroad.

CORRUPTION PERCEPTIONS INDEX (CPI)

First launched in 1995, CPI is one of the most known and cited measures of corruption. CPI ranks almost 200 countries around the world, in terms of the degree to which corruption is perceived to exist among public officials and politicians, as determined by expert assessments and opinion surveys.

The CPI ranks countries on a scale from 0 to 10; 0 perceived to be highly corrupt and 10 perceived to have low levels of corruption. The 2010 CPI shows that nearly three quarters of the countries in the index score below five, indicating a serious corruption problem worldwide.

GLOBAL CORRUPTION BAROMETER (GCB)

The GCB is a large survey to collect general public attitudes toward, and experience of, corruption in countries around the world. The GCB explores general public views about corruption levels in the country and the efforts of their governments' in anti-corruption initiatives.

One of the findings of GCB 2010 was that political parties are identified as the most corrupt institutions around the world. Political parties were perceived to be the most affected by corruption by Finns. Where 1 stands for "not at all corrupt" and 5 stands for "extremely corrupt", Finnish political parties scored 3.7, indicating them to be fairly corrupt in the Finnish context.

BRIBE PAYERS INDEX (BPI)

The BPI evaluates the supply side of corruption - the likelihood of firms from the world's industrialised countries to bribe abroad. These countries account for approximately 75 per cent of total foreign direct investment outflows and export goods worldwide. The Index is based on interviews with senior business executives.

In parallel to these global indices and surveys, TI national chapters in Africa and the Middle East, the Americas, Asia and Pacific and Europe and Central Asia have engaged in a number of efforts to measure corruption, transparency and governance - often combining objective and subjective data in their analyses.

KEY ISSUES TO BE CONSIDERED

General considerations

- **PROFOUND UNDERSTANDING OF THE DRAFTING AND USE OF GOVERNANCE ASSESSMENTS (GAS)/INDICATORS.** Incomplete understanding of the assessments or indicators may lead to overly simplified interpretations. Particularly media tends to streamline its reporting in order to create head-lines and “horse races” between the countries.
- **COMPARABILITY ACROSS THE WORLD AND COMPARABILITY OVER TIME.** While appearing objective, governance and corruption assessments are based either on partially set indicators, or perceptions of a sample of people in a particular country. Peoples’ views on corruption may vary depending on their socialisation, cultural expectations, traditions and other circumstantial variables.
- **INVENTORY OF GAS AT COUNTRY LEVEL.** The Finnish embassies in the partner countries should be fully familiar with the GAs used in that country. The first priority is given to the common EU approach on governance but the World Bank assessments and indicators also provide a good basis for the governance analysis at country level.
- **“SPIRIT OF THE PARIS DECLARATION”.** Due to a wide variety of GAs, there is risk of confusion on the quality of governance at country level. Sending misleading messages on governance to the partner country should be avoided. Finland should avoid being involved in creating new GAs unless they are necessary in the country context or agreed together with the other EU countries.
- **IMPORTANCE OF A DEMAND DRIVEN SELF-ASSESSMENTS LIKE APRM.** International assessments are sometimes seen as Western pressure on other cultures. Financial support to self-assessments like APRM increases the impact of these assessments on improving governance situation in the country. Support for self-assessments might have a positive impact on the political will for governance reform.

- › **GAS PROVIDE A POSSIBILITY FOR SYSTEMATIC DIAGNOSIS OF THE COUNTRY-SPECIFIC GOVERNANCE AND ANTI-CORRUPTION SITUATION.** The priorities for political dialogue and country programming should be drawn from the findings of the main GAs. Thus, governance and anti-corruption challenges can be confronted at an operational level and special attention and support can be given to the deficits of anti-corruption structures.
- › **PRIORITIES IN THE FIELD OF GOVERNANCE.** GAs cover all the dimensions of governance. This provides a possibility for embassies to focus on the most strategic and prioritised governance areas of a specific country. For example, democracy development is a crucial dimension to be followed before the elections. When planning new operational activities or reviewing the suitability of current aid instruments, guidance can be obtained for new directions from the results of GAs.
- › **EARLY WARNING SYSTEM.** For example, Kenyan APRM reports clearly brought out the main governance concerns and frustrations that the Kenyan people had before the 2007 elections, which were followed up by serious violence across the country. One should immediately react to these alarming challenges in the governance situation and highlight the key findings of GAs immediately in the reporting country.
- › **FOLLOW-UP MECHANISM FOR IMPROVED GOVERNANCE.** Most of the GAs and governance indicators are updated every year and they include a scoring system of their own. The EU governance profile is the only assessment, where there is a lot of variation among countries for a progress follow-up. Since the governance profile is also linked to the government action plan, this provides an opportunity to monitor the progress, especially through political dialogue.
- › **RESPONSES TO CHANGES IN GOVERNANCE SITUATION.** Even though, donors normally react to governance challenges at the country level in a fairly harmonised way, Finland needs to pay more attention on harmonising its own response systems to “alarming governance challenges”. There is a variety of different responses depend-

ing on the partner country in question. Although, there cannot be “one model” to be applied since situations vary substantially, greater cohesion should be achieved through closer coordination among the different Finnish embassies present in the partner countries.

- › **FOR FURTHER INFORMATION** on different governance assessments:
 - A User’s Guide to Measuring Corruption by UNDP;
 - Democratic Governance Reader - A reference for UNDP practitioners (UNDP).

Governance profile

- › **SEE “THE COUNCIL CONCLUSIONS ON THE GOVERNANCE IN THE EUROPEAN CONSENSUS ON DEVELOPMENT: TOWARDS A HARMONISED APPROACH WITHIN THE EUROPEAN UNION”, 16 OCTOBER 2006.**
- › **HARMONISED EU APPROACH TO GOVERNANCE.** Acknowledging the multidimensional and holistic nature of governance and that it is based on an approach respecting national ownership, dialogue and focusing on results and incentives for reform within the overarching objectives of poverty reduction and sustainable development.
- › **INTERNATIONAL/REGIONAL ANTI-CORRUPTION CONVENTIONS OBLIGATE BOTH THE EU MEMBER STATES AND PARTNER COUNTRIES.** Support for governance is more than tackling corruption and it cannot be addressed in isolation. Corruption is a major obstacle to achieving development objectives and a symptom of poor governance. International and regional agreements on corruption, must be adhered to, ratified and duly implemented by all development partners.
- › **ACTIVE PARTICIPATION BY THE EMBASSY OF FINLAND.** The EU governance profile forms the common EU position on governance in the country. No matter how many “hiccups” may be encountered or whatever form the assessment may take in the future, the main reference for the Finnish position comes from “the EU umbrella.”

- › **PARTICIPATE IN THE DRAFTING AND DEVELOPMENT OF THE GA.** Embassies participating in the drafting process and in the use of the assessment should indicate to the Finnish Foreign Ministry all the possible challenges and doubts they have related to the process. It is also important that officials dealing with governance issues at the country level will participate in the actual drafting of the GA.

- › **FLAG FOR TRANSPARENCY AND INCLUSIVENESS OF THE PROCESS WHILE RECOGNISING THE NATURE OF EXTERNAL ASSESSMENT.** The EU governance profile or other EU governance assessment is an external governance assessment drafted by the EC and the EU member states. However, in order to be an assessment of real quality, it cannot be done without a real connection to the society in question.

4 UNCAC FOR DEVELOPMENT PRACTITIONERS

This chapter focuses on the potential the United Nations Convention against Corruption (UNCAC) can provide both to Finnish bilateral and multilateral development co-operation. In order to fulfil the potential of the Convention as a framework in political dialogue and in operational activities, the Foreign Ministry officials need to be aware of the content of UNCAC and its implications to their work.

Misleading interpretations on the stipulations of UNCAC can have damaging implications to Partner Country relations. Instead of speculating on the interpretations of different treaty articles, one has to become familiar with the Convention.

UNCAC obligates every Foreign Ministry official. This obligation derives from the “public official” definition of the Convention. In defining who might be considered as possible participants in corruption, UNCAC uses a functional approach to the term ‘public official’ so that it covers anyone who holds a legislative, administrative, or executive office, or provides a public service, including employees of private companies under government contract.

4.1 UNCAC IN BRIEF

The United Nations Convention against Corruption (UNCAC) is a landmark, international anti-corruption treaty adopted by the UN General Assembly in October 2003.

UNCAC does not define corruption as such. It rather defines specific acts of corruption that should be considered in every jurisdiction covered by UNCAC. These specific acts are described in the Handbook under the title “Understanding the Phenomenon of Corruption”.

UNCAC is unique not only in its worldwide coverage but also in the extent of its provisions, recognising the importance of both preventive and punitive measures. Many preventive measures stipulated by UNCAC, like building sound financial management systems and having an effective access to public information, are extremely important for the success of development co-operation (see below - Preventive measures).

It is important to note that many of UNCAC’s provisions are mandatory, while others are either ‘strongly encouraged’ or optional.

UNCAC addresses the cross-border nature of corruption with provisions on international cooperation and on the return of the proceeds of corruption. States Parties are also obliged to help each other to prevent and combat corruption through technical assistance. Thus, UNCAC provides a framework for development assistance in the field of anti-corruption.

Preventive measures

The preventive policies covered by the Convention include measures for both the public and private sectors. These include, amongst other things, transparent procurement and sound financial management, a merit-based civil service including clear conflict of interest regimes, effective access to public information, auditing and other standards for private companies, an independent judiciary, active involvement of civil society in efforts to prevent and combat corruption, and measures to prevent money-laundering.

CRIMINALISATION AND LAW ENFORCEMENT

States Parties must criminalise bribery, as well as embezzlement of public funds. Other offences that States Parties are required to criminalise include obstruction of justice and the concealment, conversion or transfer of criminal proceeds. Sanctions extend to those who participate in or attempt to commit corruption offences.





Acts that states are encouraged – but not required – to criminalise include acceptance of bribes by foreign and international public officials, trading in influence, abuse of function, illicit enrichment, bribery and embezzlement within the private sector, money laundering and the concealment of illicit assets.

INTERNATIONAL COOPERATION

States Parties are obliged to assist each other in cross-border criminal matters. This includes, for example, gathering and transferring evidence of corruption for use in court. The requirement of dual criminality, which has traditionally hindered cooperation, is loosened. Cooperation in criminal matters is mandatory. In civil and administrative matters, it must be considered.

ASSET RECOVERY

A ‘fundamental principle’ of the Convention, and one of its main innovations, is the right to recovery of stolen public assets. Asset recovery is the main “selling point” of the Convention, and the reason why so many developing countries have ratified it. The UNCAC provisions lay a framework for countries to adapt both their civil and criminal law in order to facilitate tracing, freezing, forfeiting, and returning funds obtained through corrupt activities. The requesting state will in most cases receive the recovered funds as long as it can prove ownership. In some cases the funds may be returned directly to individual victims.

TECHNICAL ASSISTANCE AND INFORMATION EXCHANGE

Technical assistance refers generally to support aimed at helping countries comply with the UNCAC’s provisions. The Convention encourages the provision of training on topics such as investigative methods, planning and developing strategic anti-corruption policies, preparing requests for mutual legal assistance, public financial management, and methods used to protect victims and witness in criminal cases. States Parties should also consider helping each other conduct evaluations and studies on the forms, causes and costs of corruption in specific contexts, with a view to developing better policies for combating the problem. ■

4.2 UNCAC FOR POLITICAL DIALOGUE

UNCAC implicitly promotes the Paris Declaration on Aid Effectiveness by providing a commonly agreed framework for support, and by promoting accountability and transparency - the two cross-cutting issues of the Declaration.

As donor coordination normally takes place based on national development plans or poverty reduction strategies, anti-corruption obligations under UNCAC may be best addressed by integrating them into such strategic documents rather than relegating them to a separate forum or plan.

Embassies as part of donor coordination mechanisms at country level, should agree a division of labor among different dialogue forums that constitute the aid architecture in a partner country and “mainstream” compliance with UNCAC at macro-level as well as into sector dialogue. The participation of civil society in these forums should be promoted. It is important that those working at the level of policy dialogue and those working at sector level interact and have a common understanding of how compliance with UNCAC can be pursued.

UNCAC provides a more neutral basis for dialogue, where donor interventions might earlier have been perceived as “moralising” or external interference in internal affairs. UNCAC sets international standards for both developing countries and developed countries thus, recognising well the global nature of corruption. In addition, UNCAC provides a unique tool for political dialogue due to its holistic approach to corruption prevention, calling for attention to both the supply and demand sides of corruption.

While UNCAC provides a new and unique way to address governance and anti-corruption issues, one has to be careful when interpreting the treaty obligations. The article on illicit enrichment (art 20) has already caused confusion in political dialogue with the Partner countries. Illicit enrichment is an article, which imputes criminal behavior to individuals whose assets cannot be explained in relation to their lawful income. Art 20 is not mandatory in nature, which is important to be remembered.

Article 20 has received criticism from human rights advocates, who argue that such requirements reverse the presumption of innocence protected by many legal systems. Defenders of the provision argue that prosecutors still shoulder the burden of proof, as they must demonstrate, beyond reasonable doubt, the lack of legal avenues for the accumulation of excess wealth. One should remember that in Finland, the burden of proof lies on the shoulders of prosecutors, and the legal system is based on the presumption of innocence.

The UNCAC review mechanism is rather basic and it remains to be seen how much it will be able to capture de facto implementation and enforcement of anti-corruption policies. It is therefore important that embassies in countries that are up for review encourage their local counterparts to make the most of the review process.

4.3 MAKING UNCAC OPERATIONAL IN DEVELOPMENT CO-OPERATION

The status of UNCAC implementation in a partner country should be a starting point for the planning of operational activities in the country. Governance assessments provide an excellent tool to analyze the status of implementation. The preventive measures of UNCAC reflect generally accepted principles of good governance agenda.

Embassies can engage in discussions with the partner government as to the status of UNCAC implementation, where gaps exist and where support is needed on the basis of governance assessment made of the partner country.

Ratification of UNCAC obliges States Parties to take concrete steps towards compliance. Hence, one can assist partner countries to define concrete indicators or benchmarks of progress and integrate them into aid agreements or into already existing performance frameworks in order to ensure regular monitoring. In setting benchmarks, government reform priorities need to be considered, and actual performance, not just the existence or introduction of anti-corruption legislation and measures, should be evaluated.

UNCAC provides an organising framework to deliver technical assistance to partner countries and may catalyse better coordination of analytical work and technical assistance among donors in a given country. Technical assistance includes short-term assessment initiatives to help to prepare the ground for dialogue and assistance, or longer-term initiatives, which are necessary to sustainably advance in reducing corruption. Gap analyses can be used to identify reform needs at country level.

One should be able to identify the links between existing aid-funded programmes and UNCAC implementation as a way of assessing the relevance of current initiatives. It has to be notified that Finland has many development interventions that have either a direct or indirect implication on the effective implementation of the Convention. A big amount of Finnish assistance is going to the non-governmental organisations. The role of NGOs is crucial in the follow-up of effective UNCAC implementation.

KEY ISSUES TO BE CONSIDERED

- › **TOOL FOR BETTER GOVERNANCE.** UNCAC is a means to achieve and support better governance by safeguarding resources aimed at poverty reduction.
- › **RESPONSIBILITY OF CIVIL SERVANTS.** UNCAC obligates every Foreign Ministry official. The stipulations of the Convention have to be followed in development co-operation.
- › **STRUCTURE FOR MULTILATERAL AND BILATERAL DIALOGUE AND CO-OPERATION.** As UNCAC is a fairly new instrument, further exploration on its role as an anti-corruption mechanism is still needed. However, its stipulations already frame the previously scattered international and national level dialogue and co-operation on governance and anti-corruption.
- › **NEUTRAL TOOL FOR POLITICAL DIALOGUE.** Donor interventions on anti-corruption issues have sometimes been perceived as “moralising” or external interference in internal affairs. The implementation of UNCAC is a challenge to both developing and developed countries.
- › **GET TO KNOW WHAT THE PARTNER GOVERNMENT IS DOING TO IMPLEMENT UNCAC.**
 1. If the country you work in/with is not party to the Convention, the embassy in question should find out reasons for not joining the Convention and engage in dialogue with the partner government to support accession to UNCAC;
 2. If the country you work in/with has signed but not ratified the Convention, this usually means the legal basis for adoption has not yet been prepared. In this case, the embassy in question should find out the reasons and engage in dialogue with the partner government about ratification of UNCAC, and support necessary legislative changes through legal advice and other assistance as considered feasible;

3. If the country you work in/with is among those having ratified the UNCAC, try to assist to in incorporating UNCAC obligations to all political dialogue and operational activities.

- › **AVOID “OVER-INTERPRETING” UNCAC.** UNCAC is an expression of global will to prevent and criminalise corruption. UNCAC is an excellent tool in political dialogue but only so if it used in a coherent manner and it is well understood that not all the articles are mandatory in nature.
- › **EXISTING AID ARCHITECTURE.** Donors should agree on a division of labour among different dialogue forums that constitute the aid architecture in a partner country and “mainstream” compliance with UNCAC into macro-level as well as into sector level dialogue.
- › **“BEING AWARE” OF UNCAC ASSISTANCE.** Inventory of assistance at country level helps to identify which already existing development interventions support the implementation of UNCAC.

5 CHALLENGING POLITICAL WILL TO CONFRONT CORRUPTION

This chapter addresses perhaps the most commonly used explanation for poorly performing countries in the field of anti-corruption - lack of political will. Lack of political will is often identified as the culprit for failed governance and anti-corruption efforts both at political dialogue and operational level. By recognising that political will plays a big role in the success of anti-corruption work, one has to address the lack of political will. In addition, one needs to analyse how an entry point for anti-corruption reform can be found in a politically challenging environment.

Political will is a complex and largely static phenomenon. One should not draw too hasty, black or white conclusions on the existence of political will.

In order to overcome some of the challenges lack of political will might cause in anti-corruption work, one should consider to the following questions:

- › What is meant by political will in relation to anti-corruption?
- › Can the amount of political will be assessed?
- › What are the options available to strengthen political will and reduce corruption?

5.1 CLARIFYING POLITICAL WILL

By understanding political will more as a set of action-based components that are observable and measurable, and amenable to external reinforcement and support, more clarity regarding the degree of political will can be achieved. Governance assessments like the African Peer Review Mechanism (APRM) provide excellent tools to measure action based-political will.

Though political will may be expressed in spoken or written words (e.g. legal documents, speeches), it is only manifested through action. A shorthand definition of political will is: the commitment of actors to undertake actions to achieve a set of objectives - in this instance, reduced corruption - and to sustain the costs of those actions over time.

Clarifying political will confronts two interrelated challenges. The first is determining what to observe that can provide a reliable basis for inferring the existence of political will. The second is distinguishing between will and capacity.

Public declarations like ratification of international treaties like UNCAC are insufficient signals of the presence of political will absent a connection to some form of concrete action.

Inaction is often interpreted as an indicator of a lack of political will. Indicators like failure to pass legislation or pursue corruption cases in the courts are considered as negative indicators of political will. Such indicators are problematic since the failures can result from variety of factors beyond simply insufficient motivation or low prioritisation, including factors like low levels of capacity and political or institutional rivalries.

The decision makers' assessments of their capacity to implement reforms influence their willingness to make commitments. What may look to outsiders like a lack of political will can be linked instead to insufficient capacity.

“Would-be” reformers might not be confident that they have sufficient capacity for the implementation of challenging anti-corruption initia-

tives. Particularly important for pursuing sustainable anti-corruption reforms is building cross-sectoral coalitions of support to create a critical mass of public officials, civil society groups and private firms.

5.2 ENABLING ENVIRONMENT FOR POLITICAL WILL

The major enabling factor for political will is the quality of governance. Without some governance structures and procedures that establish checks and balances among the various branches of government and enable citizens to voice their concerns and hold officials accountable to some degree, political will to tackle corruption is likely to be weak, as is the ability to pursue reforms.

In a poor governance environment there is very little room for changed governance behaviour. Public officials feel little obligation to be accountable to citizens and citizens have very limited expectations for their leaders. Further, poor governance constrains the emergence of a strong civil society and disempowers citizens who would become advocates for anti-corruption policies and initiatives.

Political will to address corruption and the associated capacities to move from intent to action depend upon an enabling governance environment that provides incentives, authority, and operating space.

Anti-corruption requires good governance, which is characterised by an absence of corruption - it highlights the need for sufficient space to initiate some form of action, whether simply a public dialogue on corruption or a more ambitious reform agenda.

As the relationships between the enabling environment and political will and capacity are not at all one-way, reform success can in some cases contribute to better governance, more empowered civil society and the break-up of vested interests and patronage networks.

Concerns about the impact of corruption are worldwide. The global governance environment to prevent corruption is replete with potential contributors to political will. These include various international conventions and

international initiatives like UNCAC or Extractive Industries Transparency Initiative (EITI).

Initiatives, which aim to provide country actors with the resources and the motivation to be accountable to their citizens for concrete results, can strengthen political will.

5.3 COMPONENTS OF POLITICAL WILL

Political will can be divided into seven components:

1. **GOVERNMENT INITIATIVE** - “inner drive” concerns the impetus for a particular anti-corruption policy. Political will is uncertain when the push for reform derives purely from external actors. Initiative from country decision-makers must exist to some degree in order to talk about political will.
2. **CHOICE OF POLICY/PROGRAMME**. When country actors choose anti-corruption policies and actions based on their own assessments of the likely benefits to be obtained, the alternatives and options, and the costs to be incurred, then one can credibly speak of independently derived preferences and willingness to act.
3. **MOBILIZATION OF STAKEHOLDERS**. This component concerns the extent to which government actors consult with, engage, and mobilise stakeholders.
4. **PUBLIC COMMITMENT AND ALLOCATION OF RESOURCES**. The extent that country decision-makers reveal their policy preferences publicly and assign resources to achieve the announced policy and programme goals.
5. **APPLICATION OF CREDIBLE SANCTIONS**. Without effective sanctions, corruption cannot be reduced.
6. **CONTINUITY OF EFFORT**. Anti-corruption requires resources. Episodic efforts signal weak political will.

7. LEARNING AND ADAPTATION. Political will is demonstrated when country actors establish a process for tracking anti-corruption policy/programme progress. Learning can also apply to country policymakers observing policies and practices from other countries and adopting them for their own use if feasible.

Strong existence of these seven components naturally equates to the most powerful manifestation of political will. Political will needs to be assessed in terms of relative degree of presence or absence, and in terms of whether it is positive or negative.

5.4 STRENGTHENING POLITICAL WILL TO CONFRONT CORRUPTION

How can Finland direct its support to reinforce political will in the partner countries? Finland can assess development interventions through their likelihood of building critical elements of political will. One can find a good entry point to support the efforts of the country in stakeholder mobilisation.

The sources of motivation to confront corruption are most often seen as coming from the top political level of the country, frequently embodied in prominent individuals.

It is important to recognise that political will does not flow only from the top-down. There are bottom-up sources of political will as well. In some cases these sources may be public officials on the frontlines of service delivery and in some cases the representatives of civil society organisations or the private sector.

Political will is hardly ever static and will shift over time, calling for a graduated and flexible approach.

KEY ISSUES TO BE CONSIDERED

- › **POLITICAL WILL IS MANIFESTED THROUGH ACTION.**
- › **USE OF GOVERNANCE ASSESSMENTS (GAS).** GAs provide necessary information on the quality of the governance situation and on clarifying the strength of different components of political will in the partner country.
- › **“WILLING AND ABLE”.** Distinguish between will and capacity. Insufficient capacity might look like a lack of political will. Outside support strengthens capacity and thus, political will.
- › **AVOID DISTINCTION “PRESENCE OR ABSENCE” OF POLITICAL WILL.** Political will is not a static phenomenon. One can find an entry point to anti-corruption dialogue or activities, by focusing on one or several components of political will or by strengthening the constituencies for change.
- › **SUPPORT GOVERNANCE STRUCTURES.** The major enabling factor for political will is the quality of governance. An enabling environment is needed to initiate concrete action be that a dialogue on anti-corruption or a reform agenda.



PART II

TECHNICAL GUIDANCE FOR POLITICAL DIALOGUE AND OPERATIONAL ACTIVITIES

1 GOOD GOVERNANCE AND ANTI-CORRUPTION IN POLITICAL DIALOGUE

Part I of this Handbook provides the anti-corruption framework for development cooperation. The anti-corruption framework is the structure Finland follows in its political and policy dialogue with the partner countries but also, in its operational activities through the whole programme cycle. The same framework should be applied to both bilateral and multilateral dialogue and operations.

International political dialogue can take place at different levels and in different forms. It can use multilateral forums, like the United Nations and its agencies. It can also use regional arrangements such as the EU. The multilateral anti-corruption agenda will be addressed separately.

This chapter addresses bilateral and international/EU political dialogue at country level. Although aid architecture has changed quite drastically due to increased donor co-ordination, the greater ownership of the partner countries over their development agendas and the appearance of new donors on the scene, there is still some room for bilateral political dialogue and arrangements. Even though not covered in this Handbook, it is important to remember that a lot of policy dialogue takes place at country level, both within the sectors and in different working groups.

1.1 BILATERAL POLITICAL DIALOGUE

Political dialogue with the partner country affords an opportunity to emphasise the governance and anti-corruption issues. In this dialogue it

is important to follow up the partner country's progress in good governance measures and against corruption initiatives. If there is no progress and/or corruption seems to be increasing rather than decreasing, this has to be openly acknowledged in the dialogue.

Finland can, preferably with the other the EU countries (or with the wider international community), decrease the scale of development cooperation in the partner country. Alternatively, Finland can change its focus towards the forms of cooperation that have fewer risks. A regular and continuous political dialogue is a prerequisite to the successful implementation of development programmes and vice versa. Thus, political dialogue and operational capacity are closely connected.

The EU aims for a harmonised approach to development cooperation. However, for the time being, the focus and level of development assistance and the aid instruments of the individual member states are still agreed on, during the bilateral country cooperation consultations. These consultations are an important part of the wider political dialogue.

The objective of the bilateral country consultations is to guarantee that Finnish development cooperation takes place in a development friendly context. In these consultations, one can analyse whether political will is manifested through action or if one needs to focus more specifically on the different components of political will. Thus, during the bi-lateral consultations, Finland can gain country-specific information on the successes and concerns that either side may have. Nevertheless, corruption and/or the lack of good governance remain politically sensitive. Therefore, it is important to bring them out neutrally and with good justifications on the negotiation table.

Governance assessments, the status of UNCAC implementation and other anti-corruption conventions (e.g. African Union Convention on Preventing and Combating Corruption and Inter-American Convention against corruption) provide valuable tools for the negotiations. However, the biggest focus should be on the trend of governance and the amount of corruption in the partner country. Indicators like the worldwide governance indicators and the corruption perception index (CPI) can be useful for analysing general trends on governance and corruption.

Time must be invested in order to understand the local governance environment of the partner country. In addition to the general governance environment, one also needs to be familiar with the sector governance in those sectors where Finland is active. The governance challenges of the sector can be brought to the bi-lateral political dialogue since many of these challenges are political in nature.

The more familiar one is with the local governance situation, the more specific the Finnish officials can be in bilateral negotiations. Thus, the time spent with the partner country, can be spent firstly focusing on the challenges in the structure and capacity of the general and sectoral governance environment and secondly, addressing current and on-going governance issues.

For Finnish development cooperation the country consultations used to be held every year. Nowadays, there is a bit of variation among the various partner countries on how often the bilateral country consultations are organised. They can be held either in Finland or in the partner country. Since donor coordination has become more of a rule at the partner country level, Finland under the EU and the larger aid community increasingly participates in political dialogue under these wider set-ups.

Finland should clearly point out that its national development policy is in line with the wider EU approach to development cooperation. Finland can refer for example to the above mentioned and cited Council Conclusions on the Governance in the European Consensus on Development (16.10.2006) that emphasises the commitment for good democratic governance in partner countries. The relationship between the EU and Africa is defined by the Cotonou Agreement, that is designed to promote and expedite economic, social and cultural development.

Finland is often recognised as one of the least corrupt countries in the world. However, in political dialogue it is important to point out that corruption touches everyone and is a shared problem. Its prevention is a mutually beneficial goal. The country consultations and related political dialogue can, for example, also be used to find out whether Finnish companies have paid bribes or otherwise broken the laws or principles of good corporate governance in the partner country.

It is the beneficial to the dialogue between the partners that information and experiences are mutually exchanged and shared. Finland, like other affluent partner countries, needs to be particularly strict in its attitude towards corruption within its own borders as well as in practices of Finnish companies apply abroad if it expects commitment to good governance from partner countries. This approach also makes the important point that corruption is not only a problem in the public sector. It is important to engage the private sector, media, academic institutions and civil society in the efforts to prevent and overcome corruption.

In order to avoid corruption and/or misuse of the agreed funds, both partners need to agree on detailed cooperation arrangements, set realistic objectives and approve mechanisms for monitoring and evaluating the use of development aid. In other words, it is essential to find mutual understanding and agreement on how the cooperation and aid will be organised, administered and accounted for. Sometimes this can be very difficult. The views may differ on the state of governance and accountability in the partner country.

The Paris Declaration (2005), the Accra Agenda for Action (2008) and Busan Partnership for Effective Development Co-operation promote ownership and harmonisation in development cooperation. They also encourage alignment of external aid to the partner countries national systems. Sometimes the governments of partner countries appeal to these joint agreements in order to pressure the use of their national system, even when Finland might not be ready and willing to do so. In such cases, in order to still maintain ownership with the partner country, it is vital to clarify why the national systems are not relied on.

It needs to be remembered that when using independent third party monitoring in the follow-up of programme implementation, one can still build the capacity of the partner country systems. Thereby it does not automatically mean that there is no benefit to the partner country systems.

Since development co-operation normally takes place in fairly corrupt environments, “it is better to be safe than sorry” when planning a large development intervention. One has to be realistic when considering the capacity of the partner country systems. Finland can also suggest sup-

port directly to various anti-corruption programmes in the partner country to increase the capacity to prevent corruption.

1.2 INTERNATIONAL AND THE EU POLITICAL DIALOGUE AT COUNTRY LEVEL

Bilateral country consultations use political and policy dialogue to agree on the objectives, instruments and administration of bilateral aid. Political dialogue, however, can also be used in a wider scope to promote good governance and bring out any concerns about corruption. Political dialogue aims to bring out the expectations and concerns of all interested sides in the political and development cooperation. Sometimes there might be different views on whether political and development issues can and should be included in a joint dialogue. Particularly in countries with governance problems, the national governments may prefer to keep political discussions separate from the development dialogue. However, most of the international political guidelines include both. As long as governance is high on the development agenda, politics and development cannot be fully separated. This is particularly important to clarify when dealing with difficult political environments or with fragile states.

International political dialogue can take place at different levels and in different forms. It can use multilateral forums, like the United Nations and its agencies. It can also use regional arrangements such as the EU. Alternatively, or complementarily, it can use forums like Consultative Group (CG) that bring the development partners together with the relevant, high-level authorities of the partner country (usually ministers responsible for finance and overall development cooperation). Normally country level dialogue is conducted between relevant partner country government representatives and the ambassadors/Head of Mission of the Embassies and/or Development Agencies. Ministerial and other high level visits can also be used to take the dialogue forward.

There are different international and regional frameworks and agreements for political dialogue. For the EU members the most relevant is, the Cotonou Agreement, which is an integrated framework based on the

partnership and promotion of cooperation, trade and political dialogue between these blocs of countries.

The purpose of the Cotonou Agreement is to contribute to development, peace and security. Thus, it also promotes a stable and democratic political environment. The Cotonou Agreement puts emphasis on the political dimension of its objectives and operations, as well as the global commitments of the ACP States.

Article 8 of the Agreement makes political dialogue an integral part of the partnership between the EU and the ACP. As part of this relationship Article 8 calls for political dialogue to play a key role in tackling any concerns and difficulties at an early stage. As the dialogue emphasises political and governance obligations of both sides in relation to human rights, democratic principles, and the rule of law, concerns in governance should also be taken up in this Article 8 dialogue when needed.

The Conclusions by the Council of the European Union on the Governance in the European Consensus on Development: Towards harmonised approach within the European Union (16.10.2006) acknowledge the multidimensional and holistic nature of governance. The EU approach respects national ownership, dialogue and mutual accountability. While development aid needs to be aligned to national processes and the country systems need to be used to the maximum extent, the need for political commitment and the responsibility of the national governments is underlined.

The national governments are expected to promote democratic principles, the rule of law, access to information, access to justice and to ensure a transparent management of resources. The Conclusions also call for shared analyses, joint assessment tools, common programming frameworks and joint identification of objectives as support for the reform processes, including those used by the World Bank and OECD/DAC.

The EU and its member states now show their willingness to support efforts that focus on improving governance at all levels. Simultaneously they should demonstrate that they are also ready to take action, if there is no progress.

In the political dialogue Finland can continue to try innovative approaches in tackling the possible lack of political will in order to prevent corruption while it continues its support to strengthen governance systems of the partner country like the justice sector and the formal oversight mechanisms. Since Finland is considered as a fairly neutral partner, one can bring sensitive issues like the status of human rights defenders more easily to the common agenda than perhaps some larger EU countries.

KEY ISSUES TO BE CONSIDERED

- › **POLITICAL DIALOGUE SHOULD BE A REGULAR AND CONTINUOUS PROCESS THAT ENSURES AN EXCHANGE OF INFORMATION AND ESTABLISHES COMMON PRIORITIES AND GOALS.**
- › **FINLAND SHOULD CLEARLY POINT OUT THAT ITS NATIONAL DEVELOPMENT POLICY IS IN LINE WITH THE WIDER EU APPROACH TO DEVELOPMENT COOPERATION.**
- › **APPLY THE FINNISH ANTI-CORRUPTION FRAMEWORK FOR DEVELOPMENT CO-OPERATION IN ALL POLITICAL DIALOGUE.** The new EU anti-corruption framework “Fighting corruption in the EU” (under preparation) clearly states that minimum international anti-corruption standards as set out in UNCAC, to which both the EU member states and the partner countries are party, need to be complied. In particular, the preventive measures of UNCAC should be crucial part of political dialogue.
- › **FINLAND AS A NEUTRAL PARTNER.** As long as governance is high on the development agenda, politics and development cannot be fully separated. However, Finland often benefits from its image as a fairly neutral country without big political motives and can therefore negotiate in a result-oriented way even in politically challenging environments.
- › **INVEST TIME TO UNDERSTAND THE LOCAL GOVERNANCE ENVIRONMENT.** Use time to understand the structure and capacity of the partner country governance system. In addition, follow carefully the ongoing governance challenges and successes in the partner country. Governance assessments and indicators provide concrete tools for understanding the local governance context. They also make it possible to have a more focused dialogue with the partner country.

- › **MONITOR TRENDS ON GOVERNANCE.** Political dialogue provides a unique opportunity to follow up the partner country's progress in measures for good governance and against corruption. If there is no progress and/or corruption seems to be increasing rather than decreasing, this has to be openly acknowledged in the dialogue.
- › **MUTUAL EXCHANGE OF INFORMATION.** It is the nature of the dialogue between the partners that information and experiences are mutually exchanged and shared. Finland, like other affluent partner countries, needs to be particularly strict in its attitude towards corruption within its own borders as well as in practices that Finnish companies apply abroad if it expects commitment to good governance from the partner countries.
- › **RESPONSIVE POLITICAL DIALOGUE.** As political, economic and other conditions may radically and suddenly change in the partner country, agreed development cooperation may need to refocus or its forms may need to be reconsidered. New issues introduced to the dialogue need to be clarified. This is particularly important in the countries that are in transition towards a democratic regime. In transitional societies the legitimacy of the government is often weak and the interlocutors of dialogue may change suddenly. Thus, having a well-planned structure and agenda for dialogue is important.
- › **IMPUNITY CANNOT BE TOLERATED.** The governments of the partner countries need to quickly respond to the instances of corruption. Those found guilty of any misuses should be made accountable and punished. It is important to show through political dialogue that there is no room for a culture of impunity.

2 PROMOTING GOOD GOVERNANCE AND ANTI-CORRUPTION IN OPERATIONAL ACTIVITIES

Good governance cannot always constitute a precondition for development assistance, but it is central to achieving development objectives. Reaching good governance is a process. Therefore, as long as good governance has not been achieved, pragmatic approaches must be pursued to support progress.

It is not usually possible to tackle all the aspects of governance in a programme or project. But there are always opportunities to insert aspects of good governance into any programme or project; and activities that are contrary to good governance should not be supported. Mainstreaming is a continuous process, requiring repeated application at every opportunity.

Part I introduced the Finnish anti-corruption framework, which provides the framework for policy and programming level. The application of tools like governance assessments and UNCAC help development practitioners in identifying the choices of areas and methods of intervention. In addition, the results of GAs and the assessment of UNCAC implementation are the basic criteria to be analysed when approving a programme/project or deciding on the use of budget support.

Current governance and corruption assessments and indicators often lack progress indicators and benchmarks. The challenge with any govern-

ance or anti-corruption work is that we cannot give clear guidance on the following issues:

- › Measurable corruption risk tolerance, i.e. at which level of corruption the risks outweigh the benefits;
- › Identify clear criteria for decreasing the aid, withdrawing from one aid instrument or even from the partner country;
- › Setting up strict criteria on the exact components to be in place in order to use e.g. budget support;
- › Give a list of tools to be used in every partner country context since the tools vary from country to country.

Situations are country specific and there is no “one size fits all” model to be provided in the Handbook. However, when followed step by step, the Handbook provides both an anti-corruption framework and operational advice, which will drastically increase the capacity of development practitioners to better analyse the specific country context and the scope for operational activities.

In the following chapters, we address the key issues and principles of governance and anti-corruption to be considered in operational activities. The information provided here should be relevant when dealing with not only bilateral projects or programmes, but also with other forms of cooperation like sector-wide approaches, budget support and common-pool or basket funding.

The more we address good governance throughout all Finnish funded development programmes, the less we are confronted by corruption. In the following chapters operational advice is given on how to address a wide array of issues for securing a development-friendly operational environment and on how to address governance and anti-corruption (GAC) in all development interventions.

The operational advice is mainly drawn from the following sources:

1. Handbook on Promoting Good Governance in EC Development and Co-operation;
2. European Commission: Analysing and Addressing Governance in Sector Operations;
3. World Bank: Dealing with governance and Corruption Risks in Project Lending - Emerging Good Practices;
4. Democratic Governance Reader - A reference for UNDP Practitioners.

The issue-areas to be covered in the following chapters are:

- › Analysis of development friendly operating environment by applying the UNCAC obligations and a situation analysis of country level anti-corruption system;
- › GAC issues to be considered in the programme/project cycle;
- › Specific GAC considerations in relation to some aid instruments (general budget support, sector support, NGO support and anti-corruption programmes).

2.1 DEVELOPMENT-FRIENDLY OPERATING ENVIRONMENT

2.1.1 UNCAC as a governance and anti-corruption framework

States parties to UNCAC are required to undertake legal reforms and realign their laws and institutions to comply with UNCAC provisions. The legislative reforms needed to implement the mandatory provisions are only a first step; the serious implementation of the convention would require in many cases comprehensive revision of the institutional structure.

However, UNCAC provides only a framework, not a blueprint. Each country needs to assess its priorities and determine the most appropriate course

of action. There is also the risk of countries adopting UNCAC to satisfy donors, but without taking any real steps to implement it. On the other hand, an overambitious agenda can quickly deflate after initial setbacks.

Finland together with other development partners can play a valuable role in delivering development assistance through UNCAC implementation since the ongoing activities in many operational areas are affected by corruption.

UNCAC promotes the application of the principles of good governance through many of its provisions, in particular under Chapter II (Preventive Measures). The articles mentioned below are a few examples of how the Convention can be leveraged for programme activities in the field of governance and anti-corruption or in the other fields of development interventions.

Leveraging UNCAC for programme activities

ARTICLE 5 stipulates that anti-corruption policies shall promote the principles of the rule of law, proper management of public affairs and public property, participation of the civil society in public affairs, integrity, transparency and accountability.

ARTICLE 6 provides for the establishment of preventive anti-corruption bodies to implement the policies outlined in Article 5 and to disseminate knowledge about the prevention of corruption.

ARTICLES 7 AND 8 urge state parties to improve governance by introducing several measures, such as fair procedures for selecting and promoting civil servants, adequate salaries and training. It also urges state parties to promote integrity, honesty and responsibility among public officials through codes of conduct and safeguards against conflict of interest.

ARTICLE 9 promotes the introduction of a transparent, effective system of public procurement and public finance management.

ARTICLE 10 requests states parties to enhance transparency in public administration, including with regard to organisation, functioning and decision-making processes. Article 10 also advocates for public access to information





on the organisation, functioning and decision making processes of the public administration.

ARTICLE 12 promotes transparency and integrity in the private sector.

ARTICLE 13 requests that state parties take appropriate measures to promote the active participation of society in preventing and fighting corruption, and to raise public awareness regarding the threat posed by corruption. Article 13 also calls on anti-corruption bodies to allow public access to information and undertake public information activities and education programmes. ■

2.1.2 Situation analysis

When integrating UNCAC requirements into the programme or using them as a justification for choosing a specific aid instrument (e.g. budget support), one needs to analyse what kind of anti-corruption system is in place in the partner country.

The scoping of existing anti-corruption system referred to below might sound trivial when planning a programme in the field of health. However, if answers to the questions are mainly negative, there may be very little room for any successful programme activity in the country in question.

The questions listed below give valuable information on what kind of issues need to be incorporated into the planned development programme. They also reveal the level of implementation of UNCAC. That is to say, if there is very little commitment to anti-corruption work at country level, one needs to specifically focus on integrating well structured anti-corruption structures into the planned programme.

In relation to general and sector budget support, a complete lack of national anti-corruption system or a serious doubt on the functioning of the system

should prevent the use of these instruments. Naturally, the development partners can support the capacity of the national anti-corruption system through specific anti-corruption programmes, parallel to the use of budget support. However, one cannot start setting up a system in the partner country.

The situation analysis consists of the following issue areas and the below mentioned questionnaire should be used to analyse which aid instruments are feasible for use in a given country context:

- › **POLITICAL ENVIRONMENT.** Is there political will to support anti-corruption interventions?
- › **INSTITUTIONAL CAPACITIES.** What kind of democratic governance institutions are in place (ombudsman, parliamentary committees)? What are their mandates? Do the mandates conflict? How are the mandates coordinated? What is the lead institution? How strong is its human resources base? Is it adequately resourced? Can the available personnel deliver? How are processes of appointment, promotion, demotion and dismissal carried out?
- › **OVERSIGHT MECHANISMS.** Which oversight institutions exist? Are they effective?
- › **ANTI-CORRUPTION FRAMEWORK.** Are any anti-corruption strategies in place? What is the status of the legal framework (e.g., does it cover all mandatory crimes in the UNCAC)? Is there consistency of laws, punishment and definitions? What is the relationship between anti-corruption laws and the criminal code? Which institution carries out anti-corruption investigations? Does the Attorney-General investigate and prosecute? Is there delegated authority from the Attorney-General for prosecution?
- › **DEMAND SIDE OF ANTI-CORRUPTION.** Is there demand for anti-corruption efforts? How many CSOs work in the area? Are there community initiatives? How does the community participate?
- › **FREE MEDIA-ACCESS TO INFORMATION.** Are there independent media and access to information laws? Are there official secret laws or defamation laws?

Below is a sample questionnaire that officials dealing with the partner countries, should use when carrying out consultations on the possible aid instruments in the partner country:

1. POLICY FRAMEWORK AGAINST CORRUPTION:

- Is there a state anti-corruption strategy? What is the status of strategy?
- Have there been any other supplementary policy statements?
- What is the level of commitment by government to implementing the policy?
- Are there any policy gaps? If so, what is being done about them?

2. IMPLEMENTATION MECHANISMS:

- Which institutions are involved in anti-corruption work?
- What are the coordination mechanisms?
- How are the mandates derived? Constitution, decree or statutes?
- Has any duplication or conflict of mandates been identified? Consider the different levels of operation, e.g. national, provincial, district and community.
- What are the main constraints that institutions face?
- How are the institutions funded and is the funding adequate?
- Is there a progress report on the work plan for the implementation of the state strategy for combating corruption?

3. PROGRAMMING ISSUES:

- Are there any public awareness programmes, such as school competitions, posters, radio and TV programmes? Are such programmes continuous or are they ad hoc? What has been the impact to date?
- Are there any requirements for declaration of assets by public officials? Where are the declarations archived and how do the public and media access them? What are the penalties for transgressing non-disclosure? Has the government any intention of developing these or expanding them?
- Are there any codes of conduct for public officials, and if so, which ones? If not, are there any intentions of developing codes of conduct in the near future?
- Are there any activities around asset recovery?
- In terms of criminalisation of corruption, what are the relevant statutes? ■

2.2 GOVERNANCE AND ANTI-CORRUPTION IN PROGRAMME CYCLE

Strengthening governance and preventing corruption can be approached from two angles in every development intervention, no matter what aid instruments are being used:

- 1. MAINSTREAMING GOVERNANCE AND ANTI-CORRUPTION (GAC) ISSUES ACROSS ALL OPERATIONAL ACTIVITIES TO ENHANCE THEIR DEVELOPMENT IMPACT.** The anti-corruption framework introduced in the Part I of this Handbook, provides tools, to be used in the mainstreaming process. These tools are the means to make the GAC approach concrete. In other words, at operational level, the GAC approach is transformed to operational activities, e.g. strengthening the capacity of local communities to participate in the design process of the national forest policy in the partner country.
- 2. GIVING GREATER ATTENTION TO ASSESSING CRITICAL GOVERNANCE AND CORRUPTION RISKS AT DIFFERENT DEVELOPMENT INTERVENTIONS AND INCORPORATING MEASURES TO MITIGATE THOSE RISKS IN THE DESIGN AND IMPLEMENTATION** of Finnish financed programmes/projects or other forms of assistance e.g. budget support. Assessing and mitigating risks are mainly country and interventionspecific and can vary from one aid instrument to another. While it is important not to be risk-averse in programme/project identification, one has to guarantee that sufficient resources are available for risk mitigation during project design and implementation. In other words, “governance costs money” and concrete operational activities need to be in place to strengthen a governance and anti-corruption capacity in every operational activity.

Governance and anti-corruption should be addressed as part of normal programme/project processes. In addition, the assessment of governance and corruption risks should be available for use in every operation.

As a starting point to any development intervention identification, the following issues should be considered:

- › **IT IS CRUCIAL TO BALANCE NEEDS AND RESOURCES.** Governance and anti-corruption measures at intervention level must reflect the reality that not every issue can be addressed fully and immediately.
- › **ENGAGING THE COUNTRY TEAM IN ASSESSING GAC ISSUES AND INCORPORATING THEM INTO ANY DEVELOPMENT INTERVENTION.** In order to start any intervention identification there should be available an updated report (ASKI) on the status of governance in the partner country. The governance report should consist of the following items:
 1. Summary of the key governance challenges and constraints as analysed in the GAs conducted at country level (EU governance assessment, APRM, CPIA and worldwide governance indicators);
 2. Status of ratification of anti-corruption conventions (UNCAC and regional conventions);
 3. Situation analysis on the status and quality of national anti-corruption framework in the partner country.

Different GAC considerations introduced below should be followed, when mainstreaming GAC and reducing GAC risks in the programme cycle. They provide guidance to all the different aid methods and should be followed even if the development intervention is not purely a programme or project, unless advised differently.

2.2.1 GAC considerations in programme identification and design

- › **FULL UNDERSTANDING OF GAC CHALLENGES AND RISKS BY USING GOVERNANCE ASSESSMENTS AND GOVERNANCE PERFORMANCE INDICATORS** to identify the key challenges on general and sectoral governance situations. Designing effective mitigation measures requires “drilling down” on the nature of those risks at the programme/project level. Identifying key stakeholders, their behaviors and motivations, and potential entry points for changing the governance equilibrium. Once the governance and corruption challenges and risks have been identified, the planning team can consider which of these challenges and risks might be tackled effectively through the proposed development programme, and which are better pursued through a parallel track involving other programme or other path like political dialogue.

- › **PROGRAMME SPECIFIC RISK ANALYSIS** consisting of the following categories of risks:
 1. Programme/project stakeholder risks;
 2. Operating environment risks (country specific and institutional);
 3. Implementing agency risks (capacity, governance; fraud and corruption);
 4. Programme risks (design, social-environmental, programme-donor, delivery quality).

Risks should be clearly described in the analysis and proposed mitigation measures should be a part of the analysis.

- › **OVERCOMING THE GAC RISKS AND VULNERABILITIES.** One can choose a low key approach, which means targeting the specific weaknesses in the programme delivery or a more explicit and extensive effort, involving the design of a detailed anti-corruption action plan to the programme.
- › **INSTITUTIONAL SET-UP OF THE PROGRAMME.** The programme plan must include the institutional set-up of the programme, decision-making structures, internal controls and accountability mechanisms, transparency and participation/inclusion mechanisms, conflict prevention and resolving mechanism.
- › **STRENGTHENING PARTICIPATION AND EXTERNAL ACCOUNTABILITY MECHANISMS.** In many programmes, the participation of beneficiaries and affected people in programme identification and design can improve the quality of implementation and the sustainability of development outcomes. It can also reduce the potential for fraud and corruption.
- › **COMMUNICATION PLAN TO SEND THE SIGNALS, CONSISTENTLY, TO ALL THE STAKEHOLDERS.** One can enhance accountability by increasing the amount of information available to the public regarding sector plans, budgets, programme performance, and results.
- › **ENSURING EFFECTIVE PROJECT OVERSIGHT AND SUPERVISION.** Where governance is poor and corruption risks high, it might be appropriate to introduce an independent agent to ensure acceptable outcomes. It

may be also possible to supplement government oversight with oversight from local NGOs and community groups.

- › **IMPLEMENTING ORGANISATION.** The programme implementation organisation must be demarcated as one that has institutional capacity, administrative responsibility and budgetary powers for the programme. The implementing organisation needs to have a comprehensive anti-corruption strategy in place and clear guidelines on how to proceed if there is any suspicion on the misuse of financial resources.
- › **THE FINANCIAL MANAGEMENT CAPACITY OF THE IMPLEMENTING ORGANISATION.** The programme plan or a mission identification analysis should provide a precise description on the capacity of the implementing organisation for financial management. This analysis is essential in order to determine whether direct budget support can be given to the implementing organisation, whether it can be allowed to implement programmes on the basis of its own regulations, whether it has relevant accountability mechanisms in place e.g. budgetary transparency, whether it can independently select staff for the programme, and whether operating funds can be paid directly into the account of the implementing organisation.
- › **RESOURCES FOR FINANCIAL ADMINISTRATION AND AUDITING.** The arrangement of sufficient resources for the financial administration of the programme has generally paid for itself. By planning an exact mechanism for financial administration in advance, uncertainties and disputes over areas of responsibility within the programme are reduced, and the programme process significantly speeded up, particularly regarding the start-up stage. Expanding the scope of the audit to include technical and/or “value for money” audits make it more difficult for consultants to get away with short-changing the programme during implementation.
- › **REGULATION ON THE PROGRAMME/PROJECT PROCUREMENT OPERATIONS.** Procurement operations within a programme constitute one of the fields of activity most susceptible to corruption. Purchasing for the programme, should as far as possible be based on the procurement

rules of the implementing organisation. If these rules are inadequate or are not respected, the project planners must make further stipulations for programme operations.

- › **BUDGET ACCURACY.** The budget of the programme plan must be so accurate and detailed that it can be used as a tool to guide the operations. Specific governance strengthening and corruption prevention measures need to be clearly incorporated into the planned budget.
- › **SELECTION OF A CONSULTANT TO PROVIDE SUPPORTING SERVICES FOR THE PROGRAMME.** If the services of a consulting company are required in programme implementation, the process of selecting the company should be carried out as meticulously as possible to prevent it being influenced by bribery. The tendering process for the programme/project takes place under the procurement rules of the donor country's Foreign Ministry. It is crucial that the consulting company has clear guidelines on how to prevent corruption in its operations and that the consultants have been instructed on how to inform the company on any governance and corruption concerns they might have. The possible legal implications of neglecting the responsibility to report on possible incidences of corruption should be made clear to all the implementing agents.

2.2.2 GAC considerations in programme implementation and completion

- › **GOVERNANCE CAPACITY OF THE IMPLEMENTING ORGANISATION.** The capacity of the implementing organisation needs to be monitored in the following areas:
 1. accuracy of the administrative responsibility and budgeting for the programme;
 2. financial management;
 3. application of the anti-corruption strategy of the organisation.
- › **ACTION PLAN AND FOLLOW-UP OF THE GOVERNANCE ASSESSMENT.** Sectoral governance assessments need to be accompanied by an action plan on how the governance challenges are translated into operational activi-

ties, under the programme. The governance action plan makes it easier to follow GAC activities, and to incorporate them into a logical framework analysis (LFA) and thus, into the monitoring mechanism of the programme. Governance trends and risks - governance performance indicators - need to be monitored under the programme follow-up and decision making structures. If serious doubts on the quality of governance are raised, immediate action needs to be taken. For example, in sector programmes concerns can be brought to political dialogue level.

- › **PROGRAMME DOCUMENT AND WORK PLANS AS A FRAMEWORK FOR GAC ISSUES.** A fundamental principle is that the implementing organisation of the programme and other stakeholders (e.g. a partner country government agency), are responsible for the proper use of programme funds as well as complying with procurement rules and financial management requirements. However, the officials of the Ministry for Foreign Affairs have a responsibility to ensure that the programme proceeds are used for the intended purposes. The quality and punctuality of the programme document is an essential part of the programme implementation together with detailed work plans. Work plans provide an excellent tool for incorporating changing GAC considerations into the programme since the governance situation might change during the programme.
- › **TIMELY AND ACCURATE REPORTING AS AGREED UNDER THE CONTRACTUAL FRAMEWORK.** Quarterly, semi-annual or annual reporting, on the progress of the programme, and financial reporting on the use of funds. Specific governance strengthening and corruption prevention measures and GAC financial reporting need to be clearly incorporated into the reporting.
- › **REVIEWING THE PROGRAMME.** Joint review meetings (semi-annual or annual) in which all the stakeholders assess the progress of the programme and air concerns related to the programme implementation. These meetings can also be used to share “lessons learnt” experiences and look jointly for ways to improve the GAC issues in the programme. The role of civil society should be supported in the review process.

- › **FOLLOW-UP AND MONITORING MECHANISMS.** Well-planned and staffed supervision missions, site and field visits, thematic or other working groups that can follow the different aspects of the programme, external advisory assessments and publicising both “good practices” as well as problem areas provide the basis for monitoring together with the normal follow-up and monitoring mechanisms as set up in the programme. Third party follow-up and monitoring by NGOs or other external agents of GAC processes and outcomes - in “real-time” as much as possible - and strategically communicating these results to all the stakeholders. One needs to find innovative ways to support and fund third party monitoring by actors outside the executive branch of the government in ways that build local accountability institutions.
- › **INFORMATION EXCHANGE AND MUTUAL TRUST.** A strategic communication of results of the programme can help to create a virtuous cycle of trust and support. In order to have mutual trust, a constant and transparent flow of information, is needed between the different stakeholders. More information should also lead to “more decision authority” for the beneficiary communities and for all the relevant stakeholders.
- › **EVALUATION AND SHARING ‘THE LESSONS LEARNT’.** GAC issues should always be incorporated into evaluation processes. Since they are fairly new items in the evaluation processes, specific attention needs to be given firstly, on how the general and sectoral governance settings have contributed to the outcomes of the programme and secondly, on how the programme has improved the governance situation in the sector or in the wider governance context. Mid-term reviews give some guidance on how well the programme is proceeding in GAC issues. The recommendations of the mid-term review should always be given a high priority since governance situations can change quickly and thus have big implications to the success of the programme.
- › **AUDITING.** In addition to normal auditing, a separate audit can be requested if there is any suspicion of the possible mishandling of programme funds or it seems that the programme performance level is not satisfactory.

- › **CAPACITY BUILDING OF THE PARTNER GOVERNMENT/ORGANISATION TO TAKE OVER THE STRENGTHENING THE GAC SYSTEMS, ESPECIALLY ACCOUNTABILITY SYSTEMS.** As noted earlier, improving governance is an endogenous long-term process involving accountability systems in the country. For sustainable results, it is important that no harm is done to the development of country GAC systems in general, and evolution of accountability institutions in particular. Specific “phase-out” arrangements are needed for development programmes, but the objective should be that the strengthening of governance systems starts from the very beginning of the programme, which decreases the burden put on a phasing-out period.

2.3 ADDRESSING GAC IN DEVELOPMENT INTERVENTIONS

Finland has a wide variety of aid instruments available for use in development co-operation. It is important to keep in mind that the choice between different aid instruments need not be a binary one and in practice, a mix of different aid methods is used. The key questions to be considered when deciding on a country aid package are:

- › What is the level of trust between Finland and its partner country?
- › What type of aid instruments will produce the best development results in the country context in question?
- › How do the chosen aid instruments affect governance and anti-corruption reform?

The challenge facing donors like Finland is how to draw a line between countries that are considered “too corrupt” and those that have “acceptable” levels of corruption. For most donors, the overall governance situation - including respect for human rights, civil and political freedom, commitment to development - will be decisive, rather than corruption on its own. Most developing countries fall into the bottom third of the most widely used governance indices; the level of corruption is not the only dimension that matters in the decision matrix. However, one needs to take into a consideration that there is a point when corruption prevents the full realisation of other dimensions of governance e.g. human rights.

In the previous chapters, we have clarified all the relevant GAC considerations to be considered in political dialogue and in programme/project planning and implementation. In addition, there are some aid instruments, which need specific GAC considerations because of the nature of the aid instrument and its relevance to governance and anti-corruption work. More focus is given to the following aid instruments:

1. General budget support (GBS)
2. Sector support
3. NGO support
4. Anti-corruption programmes

2.4 GENERAL BUDGET SUPPORT (GBS)

Budget support is meant to support a partner government's programme of policies and institutional reforms intended to promote growth and reduce poverty. With budget support, aid is given directly to the partner country's government in support of its national or sectoral budgets. In practical terms, this means that rather than being linked to specific project activities, the funds are transferred to the partner government's national treasury, and are managed through the government's own budgetary procedures and accounting systems.

In addition to greater predictability of aid, budget support is expected to reduce high transaction costs that result from the multiplicity of donors' reporting and accounting requirements. Budget support is intended to promote the recipient country's ownership of development policies and increase both the institutional capacity and allocative efficiency of partner countries. Using country systems is also assumed to increase the effectiveness of the state and public administration by avoiding the establishment of special staffing arrangements and parallel structures.

The most compelling argument for using budget support is the intention to strengthen partner countries' domestic accountability to their own constituencies (rather than to the donor community) in the management of public resources through greater use of the government own accounta-

bility and review mechanisms (public account committees, external audit offices, etc).

In spite of these positive outcomes, one of the main concerns associated with the scaling up of aid and the provision of budget support relates to fiduciary risks, including corruption risks, generally defined as the risks that aid:

1. is not used for the intended purpose;
2. does not achieve value for money;
3. is not properly accounted for. Many factors can contribute to higher fiduciary risks including lack of capacity, skills and knowledge, As well as bureaucratic inefficiency and corruption.

Although the evidence is inconclusive, it is often assumed that budget support is more vulnerable to corruption than other forms of aid, as it is vulnerable to potential weaknesses in the partner countries' public finance management systems. In addition, budget support gives partner countries greater discretion in the allocation of aid, providing increased opportunities for rent-seeking and corruption.

In countries where domestic accountability mechanisms are weak or inexistent, there is also a substantial risk that aid resources are captured by the political elite, increasing its power relative to other groups in the country and ultimately, undermining domestic accountability.

By entrusting countries with the overall responsibility for managing aid, the provision of budget support also implies that donors tend to focus more on policy dialogue with the local authorities, prioritise policy planning over project monitoring and gradually step back from overseeing the actual implementation of development projects and programmes.

While corruption has been found to be a serious issue in most countries receiving budget support, there is a broad consensus in the donor community that corruption risks do not outweigh the potential benefits of budget support, as there is no clear evidence that this form of aid is more affected by corruption than other forms of aid. When successfully managed, budget support can have tremendous development implications. In

addition, budget support as an aid instrument gives donors and partner countries an opportunity for dialogue on governance and anti-corruption issues, which no other aid instrument can provide. Thus, the governance dialogue can contribute to improved governance in a country.

2.4.1 Fiduciary safeguards for minimising corruption risks in budget support

While donors usually do not consider corruption as a prohibitive factor to the provision of budget support, there is a broad consensus that diagnostic corruption information needs to be integrated into decisions on budget support operations. This is usually done in the form of ex-ante fiduciary risks assessments using tools such as the World Bank's analytical tools to assess procurement and PFM systems or the joint assessment framework known as the Public Expenditure and Financial Accountability (PEFA) performance framework.

Although most of these fiduciary risk assessment tools do not comprehensively capture corruption risks, it is usually considered that conducting such assessments has a positive impact on the partner countries' PFM systems and reform programs.

Various assessment tools have been developed to monitor the level of fiduciary risks involved in providing budget support and using country systems for managing aid. The growing trend in this regard is for donors to collaborate and/or use a harmonised framework for assessing fiduciary risks. Examples of such diagnostic tools include:

FRA FRAMEWORK AND EVALUATION OF CORRUPTION RISKS

All fiduciary risk assessments must include an evaluation of how the risk of corruption affects the performance of PFM systems and related fiduciary risks, and the expected information on whether related reforms (including anti-corruption reforms) represent a credible programme of improvement. The evaluation of corruption risks draws on various sources. These include information from the regular information sources available for evaluating PFM systems, diagnostic material on governance and specific corruption risks, such as the EU governance profile, African Peer Review Mechanism (APRM), the World Bank Country Policy and Institu-

tional Assessments (CPIA) and World Bank Institute Worldwide Governance Indicators.

WORLD BANK ANALYTICAL TOOLS

The World Bank tends to see the improvement of PFM systems as one intended outcome rather than a prerequisite for the provision of budget support. The Bank does not establish minimum PFM performance levels as a precondition for the provision of budget support. Instead, it prefers to focus on the partner government's commitment to PFM reforms, as well as on evidence of progress over time. However, the Bank requires an ex-ante assessment of the partner country's PFM and public procurement systems, using tools such as:

PUBLIC EXPENDITURE REVIEWS (PERS) OR PUBLIC EXPENDITURE AND INSTITUTIONAL REVIEWS (PEIRS).

These reviews provide a basis for improving the efficiency and efficacy of resource allocation and help countries establish effective and transparent mechanisms to allocate and use public resources for promoting economic growth and poverty reduction. Topics include analysis and projection of revenue flows, budget preparation and execution, the level and composition of public expenditures, inter- and intrasectoral analysis, and the governance of public sector enterprises. Programmatic PERs/PEIRs involve the preparation of a series of analytical reports/notes over a multi-year period.

COUNTRY FINANCIAL ACCOUNTABILITY ASSESSMENTS (CFAAS) are a key financial management diagnostic tool designed to describe and assess financial accountability arrangements in a country's public and private sectors. CFAAs support both the World Bank's fiduciary responsibilities and the achievement of its development objectives by assessing the strengths and weakness of accountability arrangements and by identifying the risks that these may pose to the use of World Bank funds.

COUNTRY PROCUREMENT ASSESSMENT REPORTS (CPARS) assess, in practice, the efficiency, transparency, and integrity of a country's entire procurement system. They identify the risks that these systems are vulnerable to and outline action plans to bring procurement in line with internationally accepted best practices.





THE COUNTRY POLICY AND INSTITUTIONAL ASSESSMENT (CPIA) rates countries against a set of 16 criteria grouped in four clusters: (a) economic management; (b) structural policies; (c) policies for social inclusion and equity; and (d) public sector management and institutions.

THE IMF'S REPORT ON OBSERVANCE OF STANDARDS AND CODES (ROSCS) summarise the extent to which countries observe certain internationally identified areas and associated standards as useful for the operational work of the Fund and the World Bank, including accounting; auditing; anti-money laundering and countering the financing of terrorism (AML/CFT); banking supervision; corporate governance; data dissemination; fiscal transparency; insolvency and creditor rights; insurance supervision; monetary and financial policy transparency; payments systems; and securities regulation.

GOVERNANCE AND ANTI-CORRUPTION (GAC) IMPLEMENTATION PLAN. This implementation plan establishes processes to ensure a systematic analysis of GAC issues in the design and implementation of Country Assistance Strategies (CAS), as well as in sector work, sector programmes and projects, with the view to systematically address GAC impediments to delivering development outcomes. This can include formulating action plans that include a series of measures designed to mitigate GAC risks associated with programmes and activities. ■

PEFA ASSESSMENTS – OVERVIEW OF THE PEFA PFM PERFORMANCE MEASUREMENT FRAMEWORK

In recent years, donors have strengthened their collaboration with the objective to develop a common integrated approach to measurement and monitoring progress in PFM performance as well as to establish a platform for dialogue. Within this framework, a PEFA working group supported by the World Bank and the IMF has developed a harmonised framework for assessing budget performance, transparency of the budget formation process, audit reports and other budget related practices known as the PEFA PFM Measurement framework.

The PEFA PFM Performance Measurement Framework incorporates 31 high level indicators that assess PFM performances against six critical objectives, including the credibility of the budget, comprehensiveness

and transparency, policy-based budgeting, accounting, recording and reporting, external scrutiny and audit. Each indicator receives an alphabetic score, which is usually perceived to be relatively difficult to understand and use, especially for cross country comparisons.

COMMON FIDUCIARY RISK MITIGATION STRATEGIES

The identification of fiduciary risks associated with the provision of budget support in a given context needs to be followed by the introduction of appropriate fiduciary safeguards to address these risks. These measures can include: 1) short term safeguards; 2) mechanisms for monitoring key corruption risks and related reforms in the middle term; and 3) a credible programme of improvement that specifically addresses corruption risks to PFM systems in the longer term.

1. SHORT TERM MEASURES

In countries where corruption risks are particularly high and not effectively addressed in the proposed programme of improvement, some donors introduce shorter term measures to mitigate fiduciary risks. There are a wide variety of measures that can be used to address weakness in PFM systems when providing budget support.

- › **“EARMARKING” BUDGET SUPPORT** for particular purposes, usually priority sectors that contribute to poverty reduction. For example, funds can be linked to certain budget line items to protect these expenditure items such as civil service salaries or pro-poor expenditures.
- › **ADOPTING A “NEGATIVE” LIST CONCEPT**, as the World Bank does under certain circumstances, under which budget support funds cannot be used for certain expenditures perceived as non pro-poor. While in practice, it has been very difficult to track the use of funds beyond initial receipts of funds, this approach has a clear advantage in mitigating the reputational risk for the donor. In some cases, a “positive list” of expenditures may also be used.
- › **DEDICATED ACCOUNTS** may also be established to enable the tracking and accounting of receipts and payments as well as to allow for the auditing of these dedicated accounts.

- › **UNDERTAKING PUBLIC EXPENDITURE TRACKING SURVEYS (PETS)** to analyse the extent to which budgeted funds actually reach the intended point of local service delivery.
- › **REQUIREMENTS TO IMPLEMENT SPECIFIC CONTROLS OR NEW LEGISLATION.** This approach, however, may lead to uncoordinated and unrealistic PFM improvement plans.
- › **REQUIREMENT FOR TIMELY AUDITED AGGREGATED FINANCIAL STATEMENTS** (focusing on budget execution) from the partner country as a condition of budget support. This can help identify how the budget support was spent.

2. MEDIUM TERM MEASURES

- › **ANTI-CORRUPTION ARRANGEMENTS IN COOPERATION AGREEMENTS.** Most donors incorporate explicit anti-corruption clauses and formal commitments to a ‘no bribes’ policy into their cooperation and financing as an important means for addressing corruption in the political dialogue with partners. Within this framework, corruption and anti-corruption targets and indicators have been explicitly introduced in the performance matrices and conditions linked to the design and implementation of budget support. These targets and indicators mainly refer to a set of legal measures, policy actions and administrative actions to be taken, such as the implementation of codes of conduct, anti-corruption programmes and policies. In addition, donors’ corruption risk management strategies also include efforts to promote greater transparency, disclosure and civil society participation, as well as to strengthen the monitoring and supervision mechanisms. Appropriate mechanisms also need to be in place to detect, investigate and sanction the misuse of development resources.
- › **MONITORING CORRUPTION RISKS AND RELATED REFORMS.** It is also important to agree in advance with partner governments on the introduction of effective corruption risks monitoring and supervision mechanisms. This can include measures aimed at strengthening internal and external controls, as well as reporting, account-

ing and auditing provisions. Further risk mitigation measures can include providing opportunities for independent monitoring of aid by the media, parliament or CSOs and the introduction of effective complaints mechanisms and whistleblower protection.

3. LONG TERM MEASURES

Short- and medium-term measures cannot substitute for more coherent and longer term approaches that address the underlying causes of corruption and provide a basis for longer term development of government systems. The above mentioned PEFA study recommends prioritising measures that are focused on establishing effective government/donor/stakeholder relations and on building momentum for government reform.

- › **PROVISION OF BUDGET SUPPORT AS AN OPPORTUNITY TO STRENGTHEN PFM.** Budget support itself can be seen as an opportunity to strengthen PFM systems and provide incentives for long-term institutional reforms. It is usually assumed that passing more funds through government systems may result in PFM improvements through the combined effect of capacity development efforts and the provision of technical assistance as well as the agreed performance conditions attached to the provision of budget support. The provision of budget support has resulted in greater attention being given to strengthening PFM systems in the partner countries. In many cases, the provision of budget support is tied to the introduction of fiduciary safeguards such as improving the government's procurement and expenditure management systems.
- › **SUPPORT TO COMPREHENSIVE ANTI-CORRUPTION STRATEGIES.** Donors can support credible anti-corruption strategies that include reforms specifically addressing identified vulnerabilities of the PFM system as part of their longer term risk mitigation strategy. These planned reforms ideally address specific weaknesses and risks identified by the initial fiduciary risk assessment. They can include transparency and accountability mechanisms such as codes of ethics for government employees, adequate procedures for reporting bribes and protecting whistleblowers, access to administrative review and appeal, as well as anti-corruption legislation.

Finland has provided and provides technical assistance to support anti-corruption and accountability institutions such as audit offices, anti-corruption commissions, parliaments, civil society etc.

2.4.2 GAC issues to be considered in relation to GBS

- › **STATUS AND CONSTANT FOLLOW-UP OF GOVERNANCE SITUATION.** Part I of the Handbook provides the elements to be reviewed and followed before making a decision to give general budget support or when making a new commitment to continue GBS. Governance assessments, UNCAC and the political commitment of the government should be part of the country level monitoring system in parallel to fiduciary risk assessments. Fiduciary safeguards for minimising corruption risks in budget support are excellent technical tools to follow specifically the status of public finance management. By focusing on the whole of the public sector and providing incentives for larger governance and economy-wide reform, budget support operations have a better chance of addressing the governance problems that plague a country. Budget support is problematic in countries that are highly corrupt and have an oppressive government - in such cases, there is the greatest risk that allocation decisions are driven by rent-seeking motives, and that budget support enhances the power of the incumbent government in ways that may reduce rather than enhance good governance and especially the realisation of human rights.
- › **ANTI-CORRUPTION IN POLITICAL DIALOGUE.** While donors usually do not consider corruption as a prohibitive factor to the provision of budget support, there is a broad consensus that diagnostic corruption information needs to be integrated into decisions on budget support operations. This is usually done in the form of ex-ante fiduciary risks assessments using tools such as the World Bank's analytical tools to assess procurement and PFM systems or the joint assessment framework known as the Public Expenditure and Financial Accountability (PEFA) performance framework. The challenge facing donors is to draw a line between countries that are considered "too corrupt" and those that have "acceptable" levels of corruption. Since there are no clear guidelines when a country is "too corrupt" for budget support, the role of political dialogue on addressing corruption issues becomes crucial.

UNCAC contains standards that were negotiated and agreed upon by a vast number of countries, including all the partner countries of Finland, which gives additional legitimacy to the recommended preventive anti-corruption measures. UNCAC can be used in political dialogue to remind of mutual legal obligations of the donors and partner countries. It has to be remembered that by continuing to aid and support to corrupt governments, donors are contributing to corruption.

- › **UNCAC AS A CONSENSUAL INSTITUTIONAL AND ORGANISATIONAL FRAMEWORK TO ADDRESS BUDGET SUPPORT CORRUPTION RELATED RISKS.** Donors can use the provisions on prevention and criminalisation as a basis for supporting partner countries anti-corruption efforts, and use UNCAC regulations on public procurement, public sector hiring and promotions rules and procedures, ethical codes, public reporting and access to information as guidance for anti-corruption reform. Budget support can be linked to the effective implementation of UNCAC preventive measures. “Positive international pressure” can therefore have an impact, create a momentum for governance reform and offer an opportunity to advocate for the effective use of UNCAC in preventing corruption.
- › **PARTICIPATORY POLICY FORMULATION AND BUDGETING.** Support initiatives aiming at empowering and building the capacity of civil society and elected representatives to hold the government accountable for aid and public resources.
- › **PROMOTE INFORMATION SHARING AND COORDINATION MECHANISMS** between the various stakeholders in a country on budget support.
- › **DEVELOPED PUBLIC PROCUREMENT SYSTEM.** Procurement processes are corruption sensitive. Thus, particular attention has to be paid to the procurement legislation, systems and practices in the partner countries receiving GBS. Legislative framework that controls procurement practices is important. Sometimes the problems in procurement are due to negligence, lack of capacity or appropriate training, lack of knowledge of the proper standards, rules and procedures. Thus, capacity building and further training should be considered.
- › **SEE CHAPTER:** Governance and anti-corruption in programme cycle.

2.5 SECTOR SUPPORT

When general budget support (GBS) is not feasible, the commitments to the principles of harmonisation, alignment and ownership may encourage the use of sector support instead. Sometimes sector support is also used in parallel with the GBS. This form of support can mean supporting the partner country's own development programmes on different sectors and thus, can take the form of sectoral budget support. The term sector support in itself covers different kinds of instruments from a sectoral budget support to a sector (or sub-sector) specific programme financed under several types of financial instruments (e.g. basket funding).

It is important to acknowledge that the sector division is not always easy or clear cut. Many times sectors contain different sub-sectors, such as a social (health, education), infrastructure (roads, transport) or productive (agriculture, forestry) sector. Sector support can also target wide (trans-sectorial) programmes such as a justice system reform, public service reform, or local government reform. These more ambiguous sector programmes are sometimes very difficult to manage as they fall under various different ministries and other institutions. Their successful implementation requires careful and smooth coordination between the different actors and stakeholders (ministries, departments, agencies, organisations and other public, and sometimes also civil society organisations).

Governance in itself is one of the sectors of Finnish development co-operation. In addition, governance issues cut across all the sectors. Thus, improving governance should be a part of any sector support programme. When governance and anti-corruption issues are addressed successfully at sector level, it can have positive implications to a general governance situation in a country.

When Finland considers the provision of aid into a sector programme, it is essential to assess not only a country-level governance situation, but also to identify sector-specific governance challenges and shortcomings. Some sectors are more prone to governance problems and corruption than others. Sectors in which investment in infrastructure is central and procurement needs

are high (roads, water, education, health) tend to be more at risk. Some sectors are better regulated by the legal or policy framework (justice sector); others need more work on setting up those regulations (health, education, etc.).

Sometimes governance assessment needs to analyse further the causes of different types of governance problems. These may include interference in decision-making by influential persons, improper connections between political and business actors, conflicts or interests between senior officials, nepotism and patronage in appointments in civil service, collusion with bidders, ethnic tensions and competition for resources bribery and kickbacks in public procurement. Occasionally some or all of the above are intertwined which makes the situation even more complex. Untangling these different connections and causes is essential in order to find a proper way to enhance good governance and prevent corruption. Different countries have different combinations of the various issues and causes. Thus, a country-specific approach is essential.

A contractual framework is important as it defines not only the objectives of the programme, but also identifies the roles and responsibilities of all parties involved. The contractual framework is equally important with all the aid instruments but, since the sector support is often considered to be “free” from the general governance context of the country, the role of the contractual relationship becomes more important.

If a country is suffering a general governance backlash where regime legitimacy is questioned by citizens and an authoritarian rule increasingly used to oppress dissent and voice, or if corruption and nepotism are rampant, then the scope for shorter term governance enhancement at sector level is likely to be limited.

If governance is consistently poor with no clear signs of readiness to improve it by the authorities, this will impact the scope of the Finnish support on the sector and on the method through which Finland can channel its funds. In order to avoid getting stuck with sector support, one should always assess the sectoral governance environment before entering a sector.

2.5.1 Addressing governance in sector operations

Ensuring sustainable results with sector aid is a challenging task. Often the issue is not lack of good ideas and funding, but governance constraints in and beyond the sector. Sector programmes sometimes face challenges because the governance environment is not conducive to them. Analysing and addressing sectoral governance is a fairly new approach to strengthening governance and thereby prevent corruption. Finland has only recently started to ensure that governance is adequately addressed at sector level. So far, a proper sectoral governance assessment has only been conducted under the forest programme “Miti Mingi Maisha Bora” in Kenya. However, a sector governance assessment should be part of the identification phase of any development programme for sectoral budget support to a specific sector or sub-sector programme.

Poor governance is widely recognised as the root cause of various systemic inefficiencies and corruption. With the help of general governance assessments like the EU governance profile or APRM, one will get an overview of the governance challenges and risks they might pose to any development intervention. However, despite a difficult governance environment in a country, sector operations might be successful if the governance deficiencies are addressed within the sector.

The main objectives of conducting a sectoral governance assessment is firstly, to get an overview of the challenges in the sector and secondly, to translate these challenges into operational activities to support the strengthening of governance within and beyond the sector.

In the following chapters, we address the ways and means to organise the process of assessing governance at sector level and how to cross the bridge from analysis to action. There are several ways of conducting a sectoral governance assessment. International financial institutions (IFIs) are at the forefront in analysing sectoral governance. The European Commission also has guidelines for “Analysing and Addressing Governance in Sector Operations” and in this context, the main aspects are drawn from the EC guidelines.

2.5.2 Guiding principles for the sectoral governance assessment

- › **DEFINE THE PURPOSE OF THE GOVERNANCE ASSESSMENT.** It is important to define the purpose of a governance assessment at the outset, since the same process is unlikely to be suitable for several purposes. The key justification for doing an assessment in the sector is to enhance the domestic actors' capacity to assess and change sector governance so that the sector performance improves. Work together with other actors and build on domestic processes. The governance assessment process should be as inclusive as necessary to achieve the best results, i.e. the involvement of domestic actors is essential. Try to build on existing consultation mechanisms.
- › **MAKE PUBLIC MORE THAN YOU THINK YOU CAN.** Sector governance assessments can be used to table identified governance shortcomings for further discussion with domestic stakeholders.
- › **CONSIDER THE ASSESSMENT AS A CONTINUOUS PROCESS INCLUDING MONITORING AND EVALUATION.** The governance situation in a given sector changes continuously (e.g. actors change, laws and policies improve etc.). Therefore updating and monitoring an assessment is a permanent ongoing process.

2.5.3 Sector governance assessment framework

- › **ANALYSING THE CONTEXT OF SECTOR GOVERNANCE.** The broader national governance context sets the stage for how sector governance is configured and how it can develop. The wider perspective is also necessary to appreciate the difficulties or limitations of creating sector islands of markedly better governance. Existing governance assessments like the EU governance profile and APRM can provide a quick appraisal of the main factors that influence sector governance processes. The objective is to get a concise overview of national drivers and constraints on governance improvement in the sector. The assessment is thus largely a selection process: which broader governance factors are most relevant for the sector and why and how are they relevant?

- › **MAPPING THE ACTORS – THEIR INTERESTS, POWER AND INCENTIVES.** The focus on actors is central to the sector governance assessment. The purpose of mapping is to identify those organisations and individuals which are (i) the main stakeholders in the sector and (ii) those presently playing an important role in governance and accountability relations in the sector. The underlying hypothesis is that sector governance will be more effective for sector development when there is:
1. An effective supply of governance (i.e. where actors in power share information, take decisions within a clearly defined regulatory framework and allocate resources transparently, offer space for participation and are accountable for their actions etc.);
 2. A demand for accountability from non-state actors and checks and balances organisations, mediated through the political system.

What is the best way to map the actors in the sector? It is important to map those actors that really matter; those with the strongest formal and informal say in governance and those with the most important formal or informal accountability obligations. In order to make this selection process, it is important to assess the interests, power and incentives of the various actors.

The broader picture of stakeholders, their importance, interests, power and incentives is an important part of the broad sector governance dialogue and provides a starting point for discussing possible changes to move towards effective governance.

- › **ANALYSING GOVERNANCE AND ACCOUNTABILITY RELATIONS.** Knowing the context and mapping the key actors in the governance accountability set-up are the first steps. The next task is to analyse the governance and accountability relations between key actors. Most often these governance and accountability relations operate within more complex settings. The governance assessment framework identifies different governance mechanisms through which authority and power can be exercised (e.g. governance by hierarchy, patrimonial governance, market governance and voluntary network governance) following “different rules of the game”.

When looking at governance relations, the first task is to analyse the mix of governance mechanisms that determine the functioning of the sector. The aim is not to pass judgment, but simply to describe and understand how the sector is actually governed, as an essential pre-requisite for a dialogue about how governance can be enhanced.

➤ **SUMMING UP – ASSESSING GOVERNANCE REFORM READINESS.** As a final step, the above three steps can be brought together in a summary matrix which presents:

1. The key features shaping and describing the existing governance relations in the sector;
2. The key strengths / opportunities as well as the key weaknesses / threats for changes in governance and accountability on the demand and supply sides.

The matrix is intended to synthesise the detailed assessments made and to provide an overview and major trends, with a focus on the overall readiness - or resistance - to enhancing governance.

Its purpose is to stimulate discussion and to help those engaged in enhancing governance to identify feasible and realistic options for change. Although the best approach is to work on both the demand and supply side at the same time, the analysis may in some countries and sectors lead to a fairly negative picture with few drivers of change and windows of opportunity for governance enhancement from the supply side. In such cases, alternative entry points need to be looked for, such as channeling the funds through NGOs.

2.5.4 Assessment areas for sector programmes

When working to support sector programmes in the partner country, we need to analyse seven sectoral governance elements with a view to determining the scope and feasibility of support. The seven assessment areas are:

1. Sector policy/strategy;
2. Budget and expenditure management;
3. Sector coordination and management;

4. Institutional setting and capacity;
5. Performance monitoring system;
6. Macro-economic framework;
7. Public financial management.

When working to prepare a sector programme, governance and accountability aspects should be considered and addressed, in each of the seven assessment areas. Though not formally prescribed, significant value may be added to the seven assessment areas by looking at governance across the components of a sector programme, because governance aspects in one area (e.g. participation in policy processes) may be closely linked to governance aspects in another area (e.g. accountability for results according to policy). From this perspective, governance concerns need to be identified and addressed throughout the whole sector programme cycle.

2.5.5 From analysis to action

How can Finland and other development partners support steady, gradual processes of improving governance? The primary focus should be on strengthening the capacity of the domestic sector governance system to deliver, and to view challenges as a long term step-by-step process.

Contributing to the strengthening of sector governance in the partner country is likely to be a slow and complex process, requiring realism and pragmatism. These realities dictate the need for “a basics first approach”. It means looking for multiple small and practical steps on how to accelerate the ongoing processes of change. Evidence confirms that overambitious governance reforms are unlikely to be sustainable.

The key governance principles participation, inclusion, transparency and accountability need to be acknowledged in sector operations. They need to be promoted in ways that fit the specific country context and respect the “basics first approach”.

The choice for relevant action will depend on country and sector specific conditions. The entry points for sector governance support will vary accordingly. The range of possible actions is fairly broad, and can be divided into the three areas of action:

1. **ACTIONS THAT STRENGTHEN THE SUPPLY SIDE FOR IMPROVING GOVERNANCE.** E.g. strengthen the government's sector and national monitoring capacities. One particular area of support for capacity development relates to developing local institutions' monitoring capacity of sector governance.
2. **ACTIONS THAT STRENGTHEN THE DEMAND FOR IMPROVING GOVERNANCE.** E.g. support to those stakeholders that articulate concrete demands for effective governance. There is a need to think strategically, if the government is not reform-minded, there is a need to think strategically about how to engage with civil society and other players in order to strengthen the demand for improved sector governance. This can be done, for example, by investing in information and communication on sector matters, as an informed citizenry is essential in strengthening the responsiveness of the state and a prerequisite for meaningful participation by civil society organisations in sector dialogue processes.
3. **ACTIONS THAT DEAL WITH GOVERNANCE CONSTRAINTS OUTSIDE A PARTICULAR SECTOR.** Reform initiatives in a sector can have an influence beyond the sector boundaries. National and cross-sectoral governance dynamics or mechanisms set the limits on how far sectors can make it alone, as well as represent opportunities at sector level. Institutional and organisational strengths and weaknesses in the public sector will set the scene for what sectors can and cannot do. For example, various governance issues cannot be tackled at sector level alone. Thus, sector governance issues need to be addressed at the national policy and political dialogue level.

2.5.6 GAC issues to be considered in relation to sector support

- › **REFORM READINESS AT SECTOR LEVEL IS CONNECTED TO THE GOVERNANCE SITUATION IN THE COUNTRY.** If a country is suffering a general governance backlash, where regime legitimacy is questioned by citizens, and authoritarian rule is increasingly used to oppress dissent and voice, or if corruption and nepotism are rampant, then the scope for shorter term governance enhancement at sector level is likely to be limited.

- › **SECTORAL GOVERNANCE ASSESSMENT AS A PREREQUISITE.** The sector governance assessment is undertaken partly to create a better insight into the degree of political will and the capacity for reform of a partner government, or certain key or less central actors within government. The findings can range from partner countries that are willing to engage in meaningful and relevant governance reforms, to situations where there is little or no commitment to improve sector governance. Where the willingness exists - even though sector capacities are weak - donors can help to develop a more comprehensive sector agenda. If there is no political will for reform, alternative entry points for sector support can be searched for or an another aid instrument rather than sector support can be chosen to target sector reform needs (e.g. support to NGOs).
- › **CONSIDER THE ASSESSMENT AS A CONTINUOUS PROCESS INCLUDING MONITORING AND EVALUATION.** The governance situation in a given sector changes continuously (e.g. actors change, laws and policies improve etc.). Therefore, updating and monitoring an assessment is a permanent and ongoing process. Reliable statistical information is a prerequisite for the meaningful monitoring of sector governance and related aid programmes.
- › **FRAMEWORK FOR SECTOR DIALOGUE.** When looking at governance relations in the sector governance assessment, the first task is to analyse the mix of governance mechanisms that determine the functioning of the sector. The aim is not to pass judgment, but simply to describe and understand how the sector is actually governed. This is essential prerequisite for a sector dialogue on how governance can be enhanced. Ensure that a regular dialogue takes place first and foremost between key domestic stakeholders as identified in the sector governance assessment.
- › **FOLLOW-UP HOW THE GOVERNANCE CHALLENGES ARE ADDRESSED UNDER THE PROGRAMME.** In a sector programme set-up or sectoral budget support co-operation it has to be carefully followed, that the identified sectoral governance challenges are supported by concrete operational activities. Governance challenges are very often considered more at “lip-service level” than in concrete terms. Thus, it takes a sig-

nificant amount of monitoring to guarantee that supporting governance activities are really incorporated into the programme document, annual work plans and the budget of the programme.

- › **CROSS-SECTOR LINKAGES AS AN ASSET.** Even if sector support focuses and targets particular sectors and can sometimes target the current development needs more accurately than GBS or other aid instruments, a clear-cut definition of sectors is sometimes difficult. Many sectors are interlinked: the agriculture sector relates to the developments and reforms in legislation/judiciary, water and infrastructure. There is a need to make sure that the sector approach does not become so wide that it is impossible to follow the development effectiveness of the programme. However, sector support brings together several actors in the sector and helps them to coordinate their work while avoiding double budgeting, overlapping work plans and inefficient use of resources available. Support has to be organised in a manner that avoids local competition on the positions or resources, but rather gives different agents opportunities to complement each other's duties.
- › **SEE CHAPTER:** Governance and anti-corruption in programme cycle.

2.6 NGO SUPPORT

Finnish official development assistance is also used to support non-state actors and particularly the civil society. Non-state actors can be financed from the NGO support fund, from support to international NGOs and from the Local Cooperation Funds (LCF) used at embassy level.

Non-governmental organisations (NGOs) are often seen as preferred implementation partners because of their closer ties to communities, particularly in contexts where state infrastructure is lacking or due to the perception that they are less corrupt than the governments of the partner countries or profit motivated consultancy companies. NGOs can play the role of “watch-dogs” in the society or even worldwide, as in the case of Transparency International (TI) or Global Witness. They are the key “helpers” in promoting good governance and reducing cor-

ruption. Sustainable governance improvements are produced over time as a result of interactions between the state and non-state actors. For a balanced interaction, development programmes must go beyond supporting the supply side of governance reforms by the executive branch, to supporting the demand side of governance activities by civil society and other non-state actors.

However, NGOs are not immune to corruption. It has to be remembered that they are not subject to potentially rigorous integrity regimes that apply to national civil service and state institutions, including the relevant internal and external oversight bodies. As a result, NGOs need to develop effective internal standards to ensure that they operate with the highest levels of integrity.

2.6.1 Limiting GAC vulnerabilities of NGOs

The existence of a governance structure with clear lines of accountability, internal conflict or interest rules, specified operational policies, as well as a financial management system that follows good practice indicates that with appropriate human resources, the organisation has the appropriate framework to operate with integrity.

Reviewing the soundness of NGO governance and financial management structures, particularly their adherence to the indicators below, can help to separate professionally functioning organisations from “NGO businesses”.

NGO governance indicators:

- **CLEAR GOVERNANCE STRUCTURE**, particularly the role of the principal governing body (the Board):
 1. Name of body;
 2. Description of relationship to other organisational entities e.g. board functions need to be separate from management; if CEO member of the board, non-voting only.



› **GOVERNING BODY DESCRIPTION** to include:

1. Basic responsibilities and powers;
2. Duties of individual board members;
3. Minimum number of board members;
4. Membership rules and terms of office;
5. Clear election procedure;
6. Minimum number of board meetings and method of convening meetings;
7. Decision-making procedures;
8. Record of board meeting minutes;
9. Conflict-of-interest provisions;
10. Board member remuneration.

› **BOARD COMPETENCIES** to include:

1. Annual review of CEO performance;
2. Review of financial management performance/ annual financial statements;
3. Responsibility to recruit CEO;
4. Responsibility to engage auditor.

FINANCIAL MANAGEMENT INDICATORS:

› **EXISTENCE OF BASIC ACCOUNTING TOOLS:**

1. Books of accounts;
2. Cash receipts book;
3. Cash disbursement books;
4. bank account records.

› **BASIC ACCOUNTING PRACTICES:**

1. written policies and procedures that follow accepted principles of accounting and control;
2. Division of functions: the approving officer for fund releases is different from the bookkeeper and the cash custodian.

- › **FINANCIAL REPORTING AND RECORD KEEPING:** financial statements of income and expenditures on file for a certain number of years.





- › **AUDITING PRACTICES:** annual audits commissioned by Board (auditor must not have a relationship to anyone in the organisation).

- › **FRAUD PREVENTION AND ANTI-MONEY LAUNDERING PRACTICES:**
 1. Existence of full and accurate audit trails of funds transferred outside NGO jurisdiction/country;
 2. Use of registered bank accounts for money flows in case of every transaction (small amounts of cash for daily expenditure excepted);
 3. Procedures to verify the identity, credentials and good faith of their beneficiaries, donors and associate NGOs;
 4. Secure and confidential maintenance of the list of the bank account numbers under the name of the NGO and any document of identifying information of persons.

- › **ADVANCED SYSTEMS FOR SOUND INVESTMENT POLICIES AND RESOURCE GENERATION PLAN** (for large and advanced organisations). ■

Since there is a large variety of different NGOs to be supported, the aforementioned indicators can only be applied selectively. There are no “one size fits all” solutions to accountability measures: the size and level of capacity of the NGO matter greatly. Requirements should be adjusted to the institutional and administrative capacities of better established vs. newer and smaller NGOs. However, the list of indicators provides some guidance to ensure that the pre-conditions for operating with integrity are in place.

There are a number of implementation period mechanisms not only to detect any potential corruption or fraud, but also to ensure that the programme is carried out as planned. These activity-level monitoring systems consist of activity and financial reporting by the NGOs, and field monitoring of activities or outputs.

To assess fully the relevance of activity and financial reporting, independent monitoring of activities during the implementation stage or post-implementation forensic audits are needed. In contrast to reporting, field visits are recognised as a more effective corruption prevention and detection mechanism. Considering the huge amount of NGOs to be supported, field visits are often time consuming and expensive.

More attention should be given to developing and promoting corruption reporting and whistle-blowing mechanisms. External monitoring approaches often function as an add-on to internal monitoring systems. The rationale is to increase and broaden the number of “eyes observing”, and thus engage stakeholders and programme beneficiaries in ensuring that funds are being used as intended and that programme is delivered as expected.

Historically, NGOs have been more accountable to donors financing them than to their beneficiaries. The way to increase downward accountability is to develop better and more extensive consultative and participatory mechanisms with stakeholders, especially with beneficiaries, in all phases of a programme.

The objective is to promote the engagement of the beneficiaries with the initiative and to provide them with the opportunity to contribute to the success of the initiative. From a corruption prevention perspective, the approach involves enlarging the range of persons who have an interest in the programme being carried out as intended, and providing them with the means to react if they detect a problem.

2.7 ANTI-CORRUPTION PROGRAMMES

It is vital to be aware, that more governance measures do not necessarily mean less corruption. Good governance and anti-corruption work go hand in hand. However, while governance measures can be used against corruption, there are situations where seemingly important governance measures do not significantly reduce corruption. Sometimes countries that appear to use “best practices” by way of governance inputs (e.g. the legislative and institutional framework and related mechanisms in place) do not end up with ideal governance outputs (e.g. reduced corruption and increased government accountability).

As has been the case with, for example, Uganda and Kenya; there can be a strong legislative framework and institutional structures in place, complemented with a number of governance strategies and anti-corruption programmes, but corruption still prevails. This problem occurs particularly when the governance measures are not genuinely aiming towards

good governance, that is, they are not properly enforced and implemented. In these particular conditions the development partners need to be particularly careful with their assistance.

Governance and anti-corruption programmes may involve public financial management reforms, anti-corruption bodies and laws, freedom of information, judicial reforms, citizen participation, social accountability and so on. Introducing programmes that depend on capable and functioning bureaucracy might not be wise in countries with weak bureaucratic capacity. In such situations, efforts to ensure integrity may have to focus on building up country systems to deliver services and supplement them with demand side governance measures that involve civil society organisations and other non-state actors, providing independent third party monitoring to verify outputs and outcomes.

As expected, in weak governance environments the key accountability institutions in the country cannot be relied upon to ensure good governance and prevent corruption. Where it is clear that elites practice corruption with impunity, direct attacks on corruption may have little chance to succeed.

What to do then in weak governance environments? There is no point in abandoning efforts to prevent corruption. However, anti-corruption programmes must go hand in hand with programmes focusing on the delivery of a few basic services in which all segments of society share an interest. In other words, for anti-corruption programmes to succeed, the foundation for corruption prevention is created by changing citizen expectations on the delivery capacity of the regime.

2.7.1 Anti-corruption bodies

As stated in the article 6 of UNCAC, the role of anti-corruption bodies is considered crucial in corruption prevention. Even though, there is no link between the existence of an anti-corruption body and the amount of corruption in a country, the setting up of such a body is often considered as a commitment to anti-corruption work:

“Article 6 provides for the establishment of preventive anti-corruption bodies to implement the policies outlined in Article 5 and to disseminate knowledge about the prevention of corruption.”

Many poor developing countries that have had problems with bad governance and corruption have set up agencies to prevent and investigate corruption. The structure, efficiency and mandates of these agencies may vary significantly. Nevertheless, many development partners are either giving direct support to these agencies or supporting them through sector reforms. When considering support to such an agency several factors need to be acknowledged:

- Why is there a need to set up a separate anti-corruption body and what added value does this body bring? What does it add to the work of regular institutions of justice, law and order? After all, in many countries where there is little corruption, there are no additional agencies with a restrictive mandate on corruption.
- Various agencies may have overlapping mandates in corruption prevention: anti-corruption commissions, investigative police units, prosecution, the Ombudsman, and parliamentary committees. The roles, mandates, and responsibilities of the different actors need to be clarified. Otherwise there is a danger that resources are wasted and these agents end up competing with each other rather than complementing each other's work.
- While there are also strong and effective anti-corruption bodies, it is important to consider the political motives for the establishment of such bodies. Some governments may have genuine concern for the adverse developmental impact of corruption. Other may do it for self-interested reasons.
- Sometimes policymakers are reluctant to enact real reforms that might threaten profit from systemic corruption. At the same time, governments in poor countries need international investments. The international community, international business and development partners, however, require evidence on the commitment to prevent and reduce corruption. An anti-corruption body may represent an effort to do just this. However, without a real mandate and enabling legislation, dedicated and competent staff, or a proper budget they remain watchdogs without "teeth".

- › In the worst case, the anti-corruption bodies become tools to repress political rivals and the members of the opposition or previous governments become the targets of investigation. Many anti-corruption bodies are dysfunctional and lack independence from the executive, receive no budgetary support from the legislature to investigate venal officials and have no procedures for forwarding the cases of corruption for prosecution by the relevant judicial authorities.
- › If the anti-corruption set-up is unsatisfactory, it may be better to support the changes in legislation first and then reconsider direct support to the agency, or support the legislative reform and the anti-corruption bodies both simultaneously through wider sector support.
- › It makes a difference whether the anti-corruption body has full powers and can take a holistic approach. This means that it has preventative, investigative and communicative functions and enough resources to implement its mandate. The system of appointments to the agency is also to be considered. If the appointments are political, the independence of the agency is in jeopardy.

2.7.2 Designing successful anti-corruption initiatives

Anti-corruption programmes fail sometimes because of “design-reality gaps” too large to overcome; that is to say, there is too great a mismatch between the expectations built into their design as compared to on-the-ground realities in the context of their deployment. As a starting point for designing a successful anti-corruption programme, one has to have a good contextual understanding of the governance realities of the country or of a specific sector.

It is prudent to be selective and realistic when supporting programmes whose primary objective is improving governance and preventing corruption. It is best to concentrate on a few anti-corruption initiatives rather than disperse limited resources attacking multiple targets. This is advisable considering the challenges in weak or poor governance environments. By prioritising and sequencing interventions on the most pressing and opportune targets, reformers can better optimise resources and limit negative interaction effects which may occur if they were to pursue

many different reforms at the same time. Donors should also scale up and replicate programmes that have local origins and involve high-performing local institutions that have proven successful in the country governance environment.

Priority should be given to anti-corruption reforms in sectors and agencies where stakeholders inside and outside government are committed to achieving results. The prerequisites for a more direct anti-corruption programme to succeed include credibility of the reformers and public trust, as well as confidence in the capabilities of the implementers. When these are not in place, it is best to defer direct anti-corruption programmes and take time to help to develop the enabling environment.

Sometimes the direct support to anti-corruption in a partner country can be best organised when the various different actors in the field work together as the following example from Tanzania describes.

Tanzania Corruption Tracker website and archive in Tanzania

Agenda Participation 2000 is a Tanzanian non-governmental organisation that grew out of a need to create awareness on multi-party elections and different policy options in Tanzanian general elections in 2000. It has developed into an advocacy organisation that follows public policies, scrutinises the use of public funds and organises various advocacy and educational campaigns.

Due to Tanzanian public scandals linked to the misuse of public funds widely published by the press, people have become increasingly aware of the corrupt practices in the country and eager to get more reliable information on what has really happened and who is responsible. At the same time, the Tanzanian Prevention and Combating of Corruption Bureau (PCCB) was re-organised and its mandate, but also workload, grew significantly. PCCB defines one of its objectives as cooperating with non-state actors in order to mobilise better public awareness.

Finland, which had been involved in supporting anti-corruption work in Tanzania, decided to channel its support via non-state actors if suitable partners





and projects are found. The Finnish Embassy in Tanzania facilitated a discussion between Tanzanian and Namibian civil societies by funding a non-state actors' conference against corruption in 2008. It brought together non-state actors from Southern and Eastern Africa and was organised by a Tanzanian NGO, For-DIA. PCCB opened the conference and called for cooperation with the civil society. Many good practices were shared and a Tanzanian action plan drawn that divided the roles and responsibilities for different organisations and media.

As a result of the cooperation, Agenda Participation 2000 (AP2000) came up with a creative technical idea to provide information on corruption and other related incidences in both public and private sector. They proposed to set up a public website and an archive that would record, analyse and store data on corruption. The idea was developed from a Namibian two-page electronic publication called Corruption Tracker, published by an independent newspaper, Insight. When the project was agreed to start, AP2000 set up an editorial board and recruited a well-known Tanzanian investigative journalist to lead the work. Finland was a partner along with Switzerland and pooled funding for a first pilot year 2009. PCCB gladly agreed to cooperate and provide all its public statistics for use. Strict rules were made to protect cases under investigation and the website does not publish information on any cases in process. A provision was also made in case of liabilities and court cases. Good journalistic practices are followed, e.g. in the protection of sources. The first of its kind in the area of corruption prevention, the Tanzanian Corruption Tracker was launched in April 2009.

The website is updated four times a year and it receives over 100 hits a day. The objective is to present information in a simple and systematic manner, and also keep a record on cases. It maintains a network of regular subscribers, and informs them by email when news is published. The editors of the website advise people not to engage in corrupt practices and encourage people to contact local PCCB offices to report incidents. Journalists and development partners can refer to Corruption Tracker as a reliable and independent source with the knowledge that information is confirmed by the PCCB.

Whether the project has indeed decreased corruption is difficult to conclude, but it has definitely impacted positively on awareness and transparent information sharing and allowed systematic follow-up of corruption in Tanzania. Increased public awareness in its part compels authorities to work more effectively against corruption and take action against those whom are involved. ■

Aid instruments

GENERAL BUDGET SUPPORT

GBS is funding for the implementation of a national poverty reduction strategy of the partner country. GBS is paid directly into the state budget of the developing country.

SECTOR BUDGET SUPPORT

SBS is non-earmarked budget support, but the objectives of cooperation are sector-specific. SBS is part of the budget planning and state accounts of the partner country.

JOINT FUNDING MODALITIES

Joint funding modalities can be used, e.g., for the implementation of a national development programme, sector programme, regional programme or thematic programme. Joint funding modalities can be basket funds, pooled funds or trust funds.

BILATERAL AND REGIONAL PROJECTS AND PROGRAMMES

Bilateral and regional project and programme cooperation consists of bilateral projects, technical assistance and multi-country and regional projects. This type of initiative is important where management systems are not conducive to programme-based cooperation.

MULTILATERAL COOPERATION

Finland's multilateral cooperation partners are the UN agencies, funds and programmes, the international financial institutions (World Bank, IMF) and regional development banks (AsDB, AfDB, IDB) and other international organisations, in the form of core funding or financing of a thematic or regional programme.

EU COOPERATION

Finland participates, through its share of the European Union's development aid, in the funding and influencing of all development policy instruments, such as EDF, DCI, and various ad hoc instruments for recent food and economic crises.





ICI

The objective is to strengthen the skills and know-how of government actors in the developing countries. The action resembles twinning with a Finnish government agency.

HEI ICI

The intention is to create a mechanism through which higher education institutions in Finland and developing countries can cooperate to produce institutional reforms, such as strengthening of developing country HEIs' administrative, methodological and pedagogical capacity, as well as to support their own development plans.

NORTH-SOUTH-SOUTH

The North-South-South Higher Education Institution Network Programme's aim is to generate and disseminate knowledge and to create sustainable partnerships between higher education institutions in Finland and in partner countries. The focus is on the higher education in partner countries.

FINNPARTNERSHIP

The business partnership programme allows Finnish businesses to contribute to development cooperation in their own special fields. Forms of business partnership cooperation include long-term trade partnerships, investment and joint ventures.

FINNFUND

Finnfund is a Finnish development financing institution, which offers long-term risk funding for profitable investments in developing and transition countries. The projects funded have an important development objective, specifically to increase the production capacity of developing countries.

CONCESSIONAL CREDITS

Concessional credits are used primarily for non-profitable environmental and infrastructure public-sector investments under national development programmes. They should not distort local markets or reduce the competitiveness of local or other suppliers in partner countries.





FUNDS FOR LOCAL COOPERATION

FLCs are an efficient way for Finnish embassies and missions to assist different actors in various countries, including CSOs, NGOs and private companies.

NGO COOPERATION

The work of NGOs complements official bilateral, multilateral and EU development cooperation. The special value that NGOs can add is their direct contacts with grass-roots level and their work to strengthen the civil society in developing countries.

RESEARCH COOPERATION

Finland funds various forms of development policy research. Some funding is targeted at researchers and research groups while other funding goes to institutions. The main research partners of Finnish development policy are the Academy of Finland, UNU-WIDER, Nordic Africa Institute, UNRISD, ECDPM and CGIAR. In addition, Finland organises application rounds of commissioned development policy research for funding of more specific and target-oriented research projects. ■

3 MULTILATERAL ANTI-CORRUPTION AGENDA

The multilateral agenda has been touched upon several times in this Handbook. Most of the commitments drawn into the Handbook, stem from the multilateral forum. The EU governance profile is a commonly agreed governance assessment applicable to all the EU member states. The United Nations Conventions against Corruption (UNCAC) is a binding international convention, which Finland has ratified. Most of the governance indicators or public finance management tools originate from the World Bank. The OECD Convention on Combating Bribery of Foreign Public Officials guides Finland on several anti-corruption areas, including development co-operation.

The multilateral forum is an incredible resource for norms and guidance on anti-corruption work, but it is also a forum, where Finland plays an active role in keeping governance and anti-corruption issues high on the agenda. Since the multilateral forum is increasingly well advanced in the field of anti-corruption, Finland needs to make sure that all “the added value” is brought to its bilateral GAC work. Even though, the line between bilateral and multilateral work is very blurred, one has to pay attention to ensuring that Finland has a coherent and harmonious anti-corruption agenda suitable to both levels. Bilateral co-operation can often support multilateral development initiatives to increase development effectiveness. Finland has experience of this from EITI (Extractive Industries Transparency Initiative).

In this chapter, we address the different levels of multilateral GAC work, and the specific characteristics the different organisations have in the multilateral forum.

Finland participates in the multilateral forum through the following activities:

- › Support for international organisations and participation in drawing up international agreements and recommendations;
- › Participating on the Boards of the international organisations and influencing and following-up their GAC work;
- › Channelling development funds through multilateral organisations to implement development programmes.

3.1 EU GOVERNANCE AGENDA – UMBRELLA FOR FINLAND

The EU is the “umbrella” for Finnish development co-operation. GAC issues are no exception to that rule. What makes the EU exceptional is that Finland is part of the decision-making machine and thus, Finland can contribute effectively to the common EU governance agenda. In addition to country level co-operation and co-ordination, the EU countries co-ordinate their work together in most of the international organisations.

In recent years, the EU has made major efforts to build a comprehensive policy framework on democratic governance, including several thematic Council Conclusions. This culminated in the 2006 EC Communication on Governance in the European Consensus on Development, which sought to develop a coherent and common approach to democratic governance. The result of the aforementioned Communication was the design of the EU governance profile, which has been addressed in this Handbook.

The EU has a comprehensive anti-corruption policy. The objective is to reduce all forms of corruption, at every level, in all EU countries and institutions and even outside the EU. The current policy does not address widely development co-operation. However, the policy is under review and there is already a new Communication on “Fighting Corruption in the EU” and thus, there is a new chance to contribute to a new comprehensive anti-corruption policy. UNCAC will play a crucial role in the new policy in relation to development co-operation.

3.2 UNCAC AT THE FOREFRONT OF THE UNITED NATIONS AGENDA

United Nations is dealing with governance and anti-corruption issues at every possible level, and governance is an issue in all the UN organisations. Finland follows all of the UN organisations it finances and it also participates at UN Headquarters level to further improve the UN internal governance. In addition, Finland contributes to how the different UN organisations address GAC issues in their relations with partner countries.

Most of the UN organisations have very similar anti-corruption policies and structures as the multilateral development banks addressed below. They are very advanced in the field of anti-corruption. In addition, governance and anti-corruption are thematic areas of two UN organisations: The United Nations Development Programme (UNDP) and the United Nations Office on Drugs and Crime (UNODC) - the Secretariat of UNCAC. The tools and guidelines of both of these organisations are addressed in the Handbook.

Even though, UNDP is the mandated UN governance organisation, most of the UN organisations work in the field of governance. Finland gives core funding to UNDP and channels earmarked money to many country level governance operations and some thematic funds.

Since the UN works everywhere, including in places where other actors cannot work, it is extremely important that Finland follows carefully how GAC issues are addressed at the UN. The UN system through its special organisations can have the biggest impact on improved governance.

Even though the UN is a large source of international conventions addressing many dimensions of good governance, it is only UNCAC, which gave it “the teeth” to really address GAC issues. UNCAC is widely addressed in this Handbook. However, the real test for the Convention comes at implementation level. UNCAC is the structure, which Finland should follow in its bilateral and multilateral work.

3.3 MULTILATERAL DEVELOPMENT BANKS (MDBS) – “FROM BLACKLISTING TO CORRUPTION HUNTERS”

Although the anti-corruption efforts of MDBs also include support for anti-corruption initiatives of partner countries, a lot of attention has been given during recent years to how to prevent corruption at organisational and operational level.

Since MDBs operate in highly corrupt environments, they are faced with high corruption risks. Consequently, MDBs have firstly sought to harmonise a lot of their anti-corruption policies, and secondly, they have openly supported “zero tolerance” to corruption.

MDBs led by the World Bank, have in the last decade invested considerable resources in improving internal controls and establishing appropriate integrity management systems to prevent and combat corruption in their projects and activities. Efforts have mainly focused on strengthening the basic elements of any comprehensive anti-corruption framework, namely prevention, detection, investigation and sanctions.

In its Governance and Anti-Corruption (GAC) strategy implementation plan, the World Bank, recommends assessing corruption risks by conducting a systematic analysis of GAC issues in the design and implementation of Country Assistance Strategies (CAS), as well as in sector work, sector programmes and projects. This involves looking at country or sector environments, as well as the nature of project activities to identify specific areas of vulnerabilities. A detailed anti-corruption action plan, including necessary risk mitigation measures, can be developed for projects or programmes that are exposed to very high risks of corruption. In addition, regular risk reviews of project and lending portfolios can be conducted to identify the projects exposed to the highest risks that need to receive enhanced managerial oversight.

The World Bank’s GAC strategy insists on the importance of disclosure, participation and oversight, including third-party monitoring to prevent corruption. This includes strengthening supervision and oversight mechanisms, ensuring timely disclosure of project information and giving a voice to beneficiaries.

In the area of procurement, most MDBs have also reviewed their policies in recent years, requiring competitive bidding and increased transparency for most projects, as well as strengthening anti-corruption provisions in all procurement processes.

Most MDBs have established a complaint mechanism supported by whistle-blowing protection provisions to encourage people involved with Bank supported projects to report suspicions of corruption and wrongdoing.

Any person who has knowledge of alleged corruption involving activities supported by MDBs is entitled to report that information by email or through secured hotlines. The main receiving points for complaints are usually the Banks' respective investigative bodies.

A major breakthrough in cross debarment of firms and individuals involved in wrongdoing ("blacklisting") has been the recent agreement by a number of MDBs on multiple debarments of firms and individuals involved in fraud and corruption. In April 2010, the ADB, the AFDB, the EBRD, the IADB and the World Bank signed an agreement to cross debar firms and individuals that have engaged in wrongdoing in MDB financed projects.

Under the new agreement, entities debarred by one MDB for more than one year may be sanctioned for the same misconduct by other participating development banks. Criteria for cross debarment include:

1. debarment has to be public;
2. it has to exceed one year;
3. it should be based on independent findings;
4. a sanctionable practice should have been committed within the previous 10 years. This collaborative process aims to increase the cost of corruption in development projects by preventing a company found to be using corrupt means by one development bank from obtaining contracts from another bank.

The World Bank together with other MDBs has a unique anti-corruption system. Even though, the system has not managed to abolish corruption from the operations of MDBs, there is a lot to be learnt from it. Some components of the MDBs anti-corruption systems can be used as examples

to be followed by other international organisations and bilateral donors. They are not flawless anti-corruption systems but they are good at applying the obligations of from international anti-corruption conventions.

The World Bank also has a significant role in operationalising UNCAC (e.g. StAR - Stolen Asset Recovery Initiative) and has also set up the International Corruption Hunters Alliance. The International Corruption Hunters Alliance aims to create an international enforcement regime to track and resolve bribery and fraud cases that reach beyond borders and affect more than one country.

3.4 OECD – CREATING COMMON GUIDELINES

The Organisation for Economic Co-operation and Development (OECD) is active at several levels in governance and anti-corruption work. Addressing corruption is at the heart of the OECD's work. In recent years, the organisation has become the leading source of anti-corruption tools and expertise in areas such as international business, taxation, governance, export credits and development aid.

The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions is addressed in Part III. It is also one of the cornerstones of effective anti-corruption work in the field of development co-operation (See Part III).

The OECD-DAC Governance Network (GOVNET) and the Anti-Corruption Task Team (ACTT) are also key platforms in the field of governance strengthening and corruption prevention. They have compiled a wide array of material and guidelines to increase effective joint responses to corruption and to increase awareness on domestic accountability.

› **MORE GUIDELINES:** www.oecd.org/dac/governance

3.5 MULTI-DONOR TRUST FUNDS – REDUCING CORRUPTION RISKS

Making a difference in weak governance environments through free standing and fragmented donor programmes involves high risks and high costs for individual donors, particularly, for those with relatively small programmes, and imposes high transaction costs on recipient countries. The multi-donor trust fund (MDTF), used commonly in challenging political environments, post-conflict situations or to support global governance initiatives like EITI, is useful in overcoming these drawbacks.

Multi-Donor Trust Funds (MDTFs) have become an important funding mechanism to channel and leverage resources in an effective and coordinated way. The increasing use of MDTFs is a direct application of the aid effectiveness agenda as they support nationally determined and led development programmes.

MDTFs are not one-size-fits-all instruments; they are designed to fit the realities of a specific country or global situations. Nevertheless, they are established on common core principles and strategies. For example, they:

- › Involve a broad range of stakeholders, including national authorities, donors, participating UN Organisations or the World Bank in the decision-making process, as appropriate;
- › Build on existing frameworks or plans rather than creating new, parallel structures;
- › Strengthen aid effectiveness through coordination and harmonisation of interventions to ensure increased coherence, efficiency, reduction of management and reporting burdens and associated transaction costs;
- › Ensure that the funding, operations and implementation modalities provide for full transparency and accountability.

MDTFs (as opposed to bilateral efforts) have a comparative advantage in rebuilding core public administration functions and funding capacity development in the public sector. For donors, MDTFs reduce information, coordination, administrative, and various access costs. They reduce fiduciary risk exposure when interaction involves possible corrupt processes. For national authorities, they can increase untied funding, reduce transaction costs, and they can bring credibility nationally and internationally. MDTFs can be set up at global, regional, country and sector levels.

However, MDTFs are not risk-free either. They might create political and reputational risks to parties involved when they do not deliver on expectations. Even though a MDTF is a good instrument to channel funds into, it does not mean that funds should not be followed. The amount of MDTFs financed, should not exceed the capacity of the Ministry for Foreign Affairs, to follow them. MDTFs have a well regulated organisational set-up, including strict public finance management regulations and internal and external oversight mechanisms. Due to very high public finance management requirements, World Bank-led MDTFs in particular have difficulties in delivering in very weak governance environments. This not to say that they should not be used in very demanding governance environments - in fact, quite the opposite.

KEY ISSUES TO BE CONSIDERED

- › **GOVERNANCE ON THE UN AGENDA.** Finland needs to be active in keeping governance high on the agenda at the UN. Special attention needs to be given to organisations like UNDP and UNODC, since governance and anti-corruption are part of their mandate. UNCAC can be used to structure multilateral work both at discussion level in annual meetings and in operational level.
- › **ENSURE THE EXISTENCE OF COMPREHENSIVE CORRUPTION PREVENTION SYSTEM.** Prevention of corruption implies that explicit anti-corruption policies, guidelines, and internal integrity management systems are in place at organisation level, backed by credible leadership and adequate resources that demonstrate the institution's firm political will and institutional commitment to effectively address corruption issues.
- › **FOLLOW-UP THE CAPACITY OF INTERNATIONAL ORGANISATIONS IN ANTI-CORRUPTION.** The annual reports produced by the investigative bodies of international organisations indicate the significant scale of corruption they confront every year. This is partly due to improved mechanisms to detect corruption. However, the amount of corruption needs to be monitored annually, since it may be a sign of a structural problem in the organisation. Most of the organisations have their investigative bodies working at their limits, so more resources should be targeted to them in order to maintain the capacity to detect and investigate corruption.
- › **ENSURE COHESION BETWEEN BILATERAL AND MULTILATERAL GAC APPROACHES.** It needs to be recognised that the corruption risk level of MDBs is much higher than an average bilateral donor since they operate in high-risk environments. However, one should not allow the gap between multilateral and bilateral GAC work to increase, but rather harmonise it to a level, that is possible under Finnish legislation. Thus, one needs to follow-up the constant development of MDBs anti-corruption policies.

- › **MULTI-DONOR TRUST FUNDS (MDTFs).** The word “trust” is a key word when channeling funds to MDTFs. Since the UN and the World Bank apply extremely strict regulative frameworks for MDTFs, they have proven to be an added value instrument for Finnish development co-operation. Bilateral country level programmes can support the objectives of MDTFs.

The global anti-corruption movement

Corruption has been at the centre of development discourse since it was brought up to the top of the agenda in the 1990s. At the same time, global efforts in preventing corruption have been formulated as a global anti-corruption movement. The movement has promoted anti-corruption in form of international mobilisation, agreement and regulation. The United Nations, the Organisation for Economic Co-operation and Development (OECD), the International Chamber of Commerce, Transparency International and a number of other organisations and actors consider corruption and its impact damaging and are seriously engaged in anti-corruption.

BEFORE THE 1990S

The research on corruption rather than anti-corruption has been relatively long. Corruption research emerged in the 1960s in the field of economic and political science, with influences from development studies, anthropology, sociology, philosophy and history. During the political events of the time, i.e. decolonisation, the question of corruption arose, as it appeared to be a challenge in the newly emerging countries in the global south. At the time, corruption was understood as a domestic phenomenon and mostly related to individual behavior.

Academic research aside, before the 1990s corruption was not considered a pressing problem. It was rather seen as “business as usual”. Corruption was believed to promote economic growth by “greasing the wheels of commerce”. In those times most European countries allowed the tax deductibility of bribes.





THE 1990S AS A TURNING POINT

The idea of anti-corruption entered into international discourse in the 1990s. Corruption was now defined as a major global problem, being “sand for the wheels of commerce” and affecting development negatively.

There are a variety of reasons for the changed perspective on corruption. First of all, the 1990s introduced a shift in the geopolitical climate as the Cold War ended. The political climate was favorable to international cooperation. During the same time, international trade grew and the world globalised. There was a need to correct market distortions such as corruption by creating common rules of the game for commerce.

Civil society and NGOs formed an integral part of the anti-corruption movement. One of the most known NGOs in the field of anti-corruption is Transparency International (TI), founded in 1993. TI broke the taboo of corruption and raised it to the global agenda.

TI has been a leading force in methodological innovation, introducing a cross-national corruption perception index that helped rank countries according to the levels of perceived corruption. The most known corruption indicator, Corruption Perception Index (CPI), was published by TI, in 1995.

THE WORLD BANK:

In 1996, James Wolfensohn as the President of the World Bank at that time, made a groundbreaking speech on the “cancer of corruption” to all the Bank’s shareholders at the 1996 Annual Meeting, placing the issue squarely on the development agenda for the first time for a multi-lateral institution. “Let’s not mince words - we need to deal with the cancer of corruption...,” Wolfensohn said. “Let me emphasise that the Bank Group will not tolerate corruption in the programmes that we support, and we are taking steps to ensure that our own activities continue to meet the highest standards of probity.”





FROM THE MILLENNIUM ONWARDS

International conventions were agreed to curb corruption around the turn of the millennium. The OECD Anti-Bribery Convention was signed in 1997 and it came into force two years later. It establishes legally binding standards to criminalise bribery of foreign public officials in international business transactions. Another major convention was signed a few years later. The United Nations Convention against Corruption (UNCAC) is the only legally binding universal anti-corruption instrument. It entered into force in 2005, taking into account both public and private sector corruption.

Today the anti-corruption movement is as local as it is global; it has actors from civil society to private companies, organisations and governments around the world. The anti-corruption movement has been able to lift the theme to the global agenda, raise awareness and encourage the development of international conventions and national legislation, as well as promote research and methodological innovations. It has taken gigantic steps since it was formed. Despite of an apparent cohesive outlook, the anti-corruption movement is not a single-tone movement. For example, different forms and types of corruption do not reach the same degree of concern among all actors. However, the aim is still the same for all – less corruption.

THE ANTI-CORRUPTION MOVEMENT AND DEVELOPMENT

Development enjoyed an important focus in the early anti-corruption movement and corruption became a key concern for many donors during the 1990s. The end of the Cold War caused a re-examination of the development aid priorities, placing anti-corruption criteria for aid instead of ideology. The World Bank, International Monetary Fund (IMF), United Nations Development Programme (UNDP), European Bank for Reconstruction and Development (EBRD) and European Union (EU) in 1996/7 revised their guidelines for relations with Third World countries, making their loans conditional on anti-corruption efforts. The amount of anti-corruption programmes also increased rapidly during the 1990s.

In development cooperation, anti-corruption is now considered to be one of the key issues. Firstly, development partners have promoted anti-corruption efforts in their partner countries. Secondly, they have begun to re-examine their internal practices and procedures to ensure aid effectiveness. Besides a growing number of anti-corruption programmes, a sector-based





approach in the anti-corruption work where “islands of integrity” are supported, has gained more popularity. In thematic anti-corruption work, fragile states and difficult political environments and natural resource management have gained increasing attention. ■

CASE

Working globally to improve natural resource governance

NATURAL RESOURCES AS A CURSE

It is paradox that people who live in a country full of diamonds and oil suffer from poverty. The majority of the world’s poorest people live in resource-rich countries. The oil and diamond revenues have not transformed into positive development outcomes. On the contrary, finding natural resources can be a curse – especially for the societies of the bottom billion. Paul Collier’s famous book, “Bottom Billion”, analyses this paradox of the poorest countries not being able to grow economically even though most of them have valuable natural resources. Thus, it is not surprising that natural resource management has become a crucial aspect in the discussion on good governance.

Weak governance and corruption lie behind the natural resource curse. The relationship between natural resources and corruption is twofold. Firstly, when resource rent is high and institutional quality is low, a number of entrepreneurs choose to become rent-seekers and as a consequence, total national income will be reduced. Secondly, corruption may happen inside natural resource management itself; instead of diverting the state’s public funds to poverty reduction efforts, public funds may be targeted to areas and sectors that guarantee the continuum in power. Patronage implies inefficient allocation of public resources.

INTERNATIONAL TRANSPARENCY INITIATIVES

As a response to bad governance and to the rise in resource-related conflicts since the end of the Cold War, a number of global and domestic initiatives and mechanisms have been created in order to reduce corruption in natural resource management.





Since 1993, Global Witness has been a leading international non-governmental organisation in campaigns against natural resource-related corruption and associated environmental and human rights abuses. Through its investigations, advocacy and campaigning, Global Witness seeks solutions to the resource curse. It has worked as a driver for a number of international mechanisms and initiatives such as the Extractive Industries Transparency Initiative and Kimberley Process, and was involved in Publish What You Pay initiative.

- › **PUBLISH WHAT YOU PAY (PWYP)** is a global network of civil society organisations that campaign for transparency in field of the extractive industry. Since the launch of the PWYP campaign in 2002, PWYP’s objectives have been for companies to “publish what you pay” and for governments to “publish what you earn” as a necessary first step towards a more accountable system for the management of natural resource revenues. When companies and governments disclose what they pay and receive, the people in resource-rich countries get a chance to hold their governments accountable for the management of natural resources.
- › The most established global responses to more transparent natural resource management are: **THE EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE (EITI) AND THE KIMBERLEY PROCESS CERTIFICATION SCHEME (KPCS)**.
- › **THE EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE (EITI)** aims to strengthen governance by improving transparency and accountability in the extractives industry. The EITI is a global standard that promotes revenue transparency. It has a robust yet methodology for monitoring and reconciling company payments and government revenues at the country level. The process is overseen by participants from the government, companies and national civil society. The EITI Board and the International Secretariat are the guardians of the EITI methodology internationally.
- › **KIMBERLEY PROCESS (KP)** is an international certification scheme for diamonds that aims to stem the flow of conflict or rough diamonds used by rebel movements to finance wars, such as in the Democratic Republic of the Congo and Sierra Leone. The aim is to cut the linkages between diamonds, corruption and conflict by requiring member governments to certificate shipments of rough diamonds as conflict-free. This conflict-





prevention mechanism is seen to stabilise countries and to create more prosperity from legal diamonds to governments, thus contributing to development. Kimberley Process Certification Scheme (KPCS) was negotiated between governments, the international diamond industry and civil society organisations. KP members account for approximately 99.8% of the global production of rough diamonds.

EITI has been a major incentive for changes in legal frameworks for natural resource management at national level. A major step was taken by President Obama when transforming the Dodd-Frank Wall Street Reform and Consumer Protection Act, known as the Dodd-Frank Act, into law in July 2010.

The Dodd-Frank poses mandatory disclosure obligations for companies receiving revenues from natural resources and companies that have securities registered with the US Securities and Exchange Commission. The Act obligates the biggest companies in the world to strict transparency. The Act represents a major step to improve national anti-corruption legislation in the field of natural resource management.

In addition to non-renewable resources such as oil, gas, minerals (such as diamonds) and metals, the risk of corruption cuts across renewable resources too, such as forests, fisheries and land. Europe's response to the illegal logging is reflected in the FLEGT (Forest Law Enforcement, Governance and Trade) Action Plan. The EU FLEGT Action Plan provides measures to exclude illegal timber from markets, to improve the supply of legal timber and to increase the demand for responsible wood products.

It should be remembered that more transparency in the revenue side of natural resource industry is not a guarantee of a corruption free process. The chain of corruption works before and after "publishing what you pay and earn". A big part of corruption takes place when deciding which company gets the license to drill minerals or how much it can drill. ■



PART III

LEGISLATIVE AND JUDICIAL MEANS OF PREVENTING CORRUPTION

1 THE LEGAL FRAMEWORK FOR COMBATING CORRUPTION IN FINLAND

1.1 THE CONCEPT OF CORRUPTION

The fight against corruption is a broad and multidimensional concept, which can include many different elements. Combating corruption is not solely the responsibility of the authorities or individual public officials. Representatives of the private sector, private companies, non-governmental organisations (NGOs) and individual citizens can substantially contribute to it as well.

Corruption and bribery have been defined in many different ways. According to probably the most common definition, corruption/bribery refers to the abuse of public power or a position of power for personal gain. However, there is no comprehensive definition that would cover all the elements of corruption/bribery. In this handbook, the terms “bribery” and “corruption” are used interchangeably. In general, however, it can be thought that bribery refers to an actual criminal offence, while corruption is a more general and broader term. The term corruption usually covers the entire array of problems, including social and other societal dimensions. Corruption covers both bribery and other influence through inappropriate means.

Bribery in the narrow framework of criminal law should be distinguished from bribery in a broader socioeconomic sense. This is necessary, because in accordance with the rule of law, the language of the provisions of criminal law must be accurate and unambiguous, while bribery in a broader sense may also be used as a more general term that can be applied to the prevention of crime. To address this requirement, the definition of bribery should cover concepts such as integrity, transparency, accountability and good governance.

The scope of legally sanctioned bribery varies between legal systems. In the following, some key elements of combating and preventing corruption are described and relevant provisions of Finnish legislation are detailed. In addition, Finland has signed a number of international anti-corruption conventions. These are also described below.

1.2 GOOD GOVERNANCE

In Finland, the values of state administration are based on the fundamentals of a democratic constitutional state. In order to strengthen the common value basis and ensure high ethical standards, those employed in government administration should adopt these values as part of their daily activities. The code of ethics for public officials includes values such as efficiency, transparency, high quality and competence, confidence, the service principle, impartiality and independence, equality and responsibility. Compliance with these values when performing official duties is one of the most efficient anti-corruption measures.

In Finland, good governance has been adopted as one of the key elements in the activities of public authorities. In accordance with the principle of the rule of law, the exercise of official authority must be based on law. According to section 21 of the Finnish Constitution, everyone has the right to have his or her case dealt with appropriately and without undue delay by a legally competent court of law or other authority, as well as to have a decision pertaining to his or her rights or obligations reviewed by

a court of law or other independent organ for the administration of justice. Provisions concerning the publicity of proceedings, the right to be heard, the right to receive a reasoned decision and the right of appeal, as well as the other guarantees of a fair trial and good governance shall be laid down by an Act.

According to the Administrative Procedure Act, the fundamental principles of good administration shall be applied to all administrative activities.

Good governance includes requirements such as the following:

- › administrative procedures shall be conducted diligently and appropriately, with a good service attitude;
- › advice shall be provided;
- › the procedures shall be public and include the obligation to let the party concerned be heard and have the right of appeal;
- › the procedures shall take into account language-related rights and comply with the principles of impartiality, objectivity and equality.

The publicity of administrative activities is one of the most important principles of good governance and the actions of authorities. It is governed by the Finnish Act on the Openness of Government Activities. Its primary rule is the principle of openness, according to which all actions of authorities are public. Exceptions to the principle of openness are strictly limited. The publicity of the actions of authorities also means that official documents are public. Everyone has the right to receive information about official documents that are in the possession of authorities.

According to the Finnish Civil Servants Act, public officials shall act in a manner considered appropriate to his or her position and duties. Public officials must not demand, accept or agree to receive any financial or other benefit if it could undermine confidence in a public official or authority. According to the Finnish Administrative Procedure Act, a public official or employee in service shall not act in a matter if he or she is disqualified. This means that his or her relation to the matter or a party to the matter is such that it could jeopardise his or her impartiality. Public officials and employees in service are responsible for ensuring that they do not participate in the handling of such matters. Should an official suspect that such a situation exists, he or she shall immediately inform his or her supervisor of the matter.

Under Finnish law, public officials do not yet have a general obligation to report suspected bribery offences noted in the actions of office to law enforcement authorities. In 2009, relating to its Anti-Bribery Convention, the OECD issued a recommendation concerning the fight against bribery. It states that measures should be taken to facilitate reporting of suspected acts of bribery by public officials, in particular those posted abroad. It is recommended that such suspicions are reported either directly or indirectly (such as through one's supervisors) to law enforcement authorities. In accordance with the OECD's Anti-Bribery Convention, the obligation to report would concern suspected offences committed by Finnish companies by bribing foreign authorities. It is also worth noting that the Ministry for Foreign Affairs is adopting a procedure for all documents that contain the index term "corruption" to be directly submitted for the information of the Finnish National Bureau of Investigation in the document management system.

Reasons for Finland's low corruption rate

Since 1995, Transparency International has been publishing an annual corruption index survey. For many years now, Finland has come out in this international survey as one of the least corrupt countries in the world. Other Nordic countries have also done well in the survey. In addition to Finland, Iceland, Denmark, Sweden and Norway have been among the top ten countries.

In Finland, only a few suspected bribery offences are reported to the authorities each year. The figure is so low that many foreigners find it hard to comprehend. A low corruption rate in society is strongly connected with general welfare. At the same time this indicates that there might not be a single explanatory factor for the low corruption rate. Instead, it would be the result of a multitude of social and societal factors. Lately, Finland has been rated as a country with the world's best competitiveness, education system and information society. These are general-level factors, and no accurate scientific analysis has been conducted in Finland on the effects of these factors on the country's low corruption rate.

Generally it can be stated that the level of social confidence and order is high in Finland, as well as social transparency and respect for the legal system. In addition, Finnish citizens are socially and politically active and share a high level of respect for freedom and human rights.

In the following some of the most important explanatory factors for Finland's low corruption rates are described.

FINLAND'S GENERAL ADMINISTRATIVE CULTURE Finland's legal and administrative structure and culture are the result of a very long and steady gradual historical development. Finland was under the rule of Sweden and Russia for a long time and was influenced by both cultures. As law evolved through local customs and habits into actual legislation, at the same time it became generally accepted by the citizens. Acceptance of and respect for law increased along with the development of the class society, as legislation was needed to secure the interests of different groups. Strict observance of and respect for law was an old tradition. Respect for the rule of law, as well as appealing to it, increased particularly when society was combating possible violations of the law committed by the Russian regime.





Finland's administrative structure is rather low-built, with only a few decision-making levels. The local administration has a very independent role. Since the days of Swedish rule, the position of public authorities in Finnish society has been strong, and public officials have been highly respected. The school system has in principle guaranteed everyone the opportunity to become a public official and make progress in one's career through personal merits. The salaries of public officials have been relatively good and their jobs have been secure.

The qualifications for posts, the appointment process and the public officials' rights and duties are all recorded in the law. The most merited applicants must be selected for the offices, and all applicants must be treated equally. Principally, there are no political appointments to office in Finland. Basically only ministers and Permanent Secretaries in the ministries are nominated on a political basis. The professional competence of public officials is guaranteed by training, and the backgrounds of applicants to the most important posts are checked in advance. Those appointed to the highest positions are required to provide specific descriptions of their commitments and assets.

Decision-making in public administration is usually collegial. This means that a public official presents a matter to his or her superior with justifications. In Finland it is an established practice that public officials should not be involved in decision-making in matters concerning themselves, their near relatives or friends and in the event that they are dependent on or have any other kind of relationship with any party in the matter.

PUBLICITY AND TRANSPARENCY OF THE PERFORMANCE OF OFFICIAL DUTIES

Keeping public administration as transparent as possible is one of the fundamental principles of Finnish public administration. Decisions must be public so that citizens, NGOs or the media can comment on them where necessary. Everyone has the right to be heard in his or her matter, the right to receive a reasoned decision and the right of appeal. In practice, transparency and publicity are the most important anti-corruption tools. The publicity of documents guarantees that the actions of authorities can be followed and monitored. Principally, citizens have the right to receive information about any documents of any civil service department. For example, the taxation data of private citizens is public. Anyone can request anyone's taxation data from the tax authorities without specifying a reason.





SUPERVISION OF THE ACTIONS OF AUTHORITIES The Finnish public administration is supervised in many ways. Supervision and internal audits are part of the management and operations of civil service departments. In addition to internal supervision, matters can be submitted to a higher public official or department to be assessed or decided upon. Furthermore, public administration is supervised by the Parliamentary Ombudsman and the Chancellor of Justice. In addition to these, there are specific supervisory authorities in the different administrative sectors. Civil service departments are also supervised by the National Audit Office of Finland. It is Finland's supreme audit institution and reports directly to Parliament. It audits the state's finances and asset management in order to ensure that public funds are spent wisely and in compliance with legislation.

INDEPENDENT AND EFFICIENT JUDICIAL SYSTEM AND EXECUTION OF DECISIONS According to Finnish citizen surveys, policemen, prosecutors and judges are highly regarded and people have a very high level of confidence in these professions.

It is easy for citizens to submit matters for the decision of an impartial authority or court, and their decisions can be appealed to a higher authority. The public legal aid system ensures that people of limited means can have their matters handled.

CONFIDENCE IN POLITICAL ACTORS Finns have good confidence in political actors. Political parties are reliable, party financing is transparent and the provisions on the reporting of assets and conflicts of interest are efficient.

SOCIAL FACTORS The Finnish school system has several times been rated as the best in the world. Adult literacy rate is nearly 100 per cent. This also suggests that citizens are capable of understanding, executing and protecting their rights. At least in theory, Finnish citizens are relatively well equipped to identify bribery in their living environment, understand its unacceptability and refer such acts for official investigation.

Finnish society can be described as very democratic and equal. Finland was one of the first countries to grant women the right to vote in national elections. According to various studies, Finland has high level of equality between the sexes. In addition, the level of wages and salaries both in the public and





private sectors is reasonable and the differences in income are small. In practice, the reasonable income level and high standard of living prevent the acceptance of corruption. The number of poor people is very low and social subsidies guarantee the basic necessities for everyone.

A considerable part of social decision-making takes place at the local (municipal) level, near the citizens. This municipal-level decision-making that affects daily life covers areas such as taxes, the building of roads and the provision of social services. Citizens can affect local administration through elections and initiatives, for instance.

Since the 1950s, well-being services have increased and expanded considerably. Important elements include free basic education for all, the opportunity for free higher level education and virtually free health care services that are guaranteed for all. There are special support systems for the unemployed and disabled.

In general, the media plays a particularly important role in anti-corruption. Corruption-related suspicions and identified cases are almost always extensively covered in the media. Finns are keen newspaper readers and internet users. Therefore, their opportunities to obtain information are well guaranteed. ■

2 BRIBERY AS A CRIMINAL OFFENCE

2.1 BRIBERY OFFENCES AND THE FINNISH PENAL CODE

In the Finnish Penal Code, the central provisions related to combating bribery are those concerning bribery offences in the private and public sectors, acceptance of a bribe as a Member of Parliament, and giving of a bribe to a Member of Parliament and electoral bribery.

In addition to actual bribery offences, other offences mentioned in the Finnish Penal Code that may include bribery offence type elements include embezzlement, violation of a business secret, misuse of a business secret, fraud, misuse of a position of trust, breach and negligent breach of official secrecy, abuse of public office, aggravated abuse of public office, violation of official duty, negligent violation of official duty, abuse of insider information and aggravated abuse of insider information.

Other important penal provisions relating to anti-corruption include money laundering and accounting offences.

2.2 BRIBERY IN THE PUBLIC SECTOR

In Finland, bribery in the public sector refers to situations where someone gives a bribe to a public official or a public official accepts a bribe. The bribe can be given by any private person or another public official. Moreover, a person who on behalf of a business enterprise gives a bribe to a public official commits an offence. A person who participates in the giving of a bribe as an intermediary can be convicted and sentenced for

participation in an offence. In this case the offence can be either incitement or abetment. A person acting as an intermediary may be a consultant or otherwise in a private-law contractual relationship with the person actually giving the bribe. If the act is deemed to fulfil the criteria of giving a bribe, such intermediaries can also be convicted and sentenced. The nationality of the person giving the bribe has no significance with regard to the realisation of the offence.

Provisions concerning bribery offences in the public sector are contained in chapters 16 and 40 of the Finnish Penal Code. The purpose of criminalisation is particularly to ensure confidence in the public sector. The provisions on giving bribes are in chapter 16 of the Penal Code:

Penal Code, Chapter 16: Section 13, Giving of a bribe

A person who promises, offers or gives to a public official in exchange for his/her actions in service a gift or other benefit intended for him/her or for another, that influences or is intended to influence or is conducive to influencing the actions in service of the public official, shall be sentenced for giving of a bribe to a fine or to imprisonment for at most two years.

Also a person who, in exchange for the actions in service of a public official, promises, offers or gives the gift or benefit referred to in subsection 1 shall be sentenced for giving of a bribe.

Penal Code, Chapter 16: Section 14, Aggravated giving of a bribe

If in the giving of a bribe

- 1) the gift or benefit is intended to make the person act in service contrary to his/her duties with the result of considerable benefit to the briber or to another person or of considerable loss or detriment to another person, or





- 2) the value of the gift or benefit is considerable

and the bribery is aggravated also when assessed as a whole, the offender shall be sentenced for aggravated giving of a bribe to imprisonment for at least four months and at most four years. ■

The provisions on accepting a bribe are in chapter 40 of the Penal Code.



Penal Code, Chapter 40: Section 1, Acceptance of a bribe

If a public official, for his/her actions while in service, for himself/herself or for another,

- 1) asks for a gift or other unjustified benefit or otherwise takes an initiative in order to receive such a benefit, 2) accepts a gift or other benefit which influences, which is intended to influence or which is conducive to influencing him/her in said actions, or 3) agrees to the gift or other benefit referred to in paragraph (2) or to a promise or offer thereof, he/she shall be sentenced for acceptance of a bribe to a fine or to imprisonment for at most two years.

A public official shall be sentenced for acceptance of a bribe also if for his or her actions while in service he/she agrees to the giving of the gift or other benefit referred to in subsection 1(2) to another or to a promise or offer thereof.

A public official may also be sentenced to dismissal if the offence demonstrates that he/she is manifestly unfit for his or her duties.





Penal Code, Chapter 40: Section 2, Aggravated acceptance of a bribe

If in the acceptance of a bribe

- 1) the public official stipulates the bribe as a condition for his or her actions or it is his or her intention, because of the gift or benefit, to act in a manner contrary to his or her duties to the considerable benefit of the party giving the gift or of another, or to the considerable loss or detriment of another, or
- 2) the gift or benefit is of significant value

and the acceptance of a bribe is aggravated also when assessed as a whole, the public official shall be sentenced for aggravated acceptance of a bribe to imprisonment for at least four months and at most four years and in addition to dismissal from office.

Penal Code, Chapter 40: Section 3, Bribery violation

If a public official, for himself/herself or for another,

- 1) asks for a gift or other unjustified benefit or otherwise takes an initiative in order to receive such a benefit, or
- 2) accepts or agrees to a gift or other benefit or agrees to a promise or offer of such a gift or other benefit

so that the actions are conducive to weakening confidence in the impartiality of the actions of authorities, he/she shall be sentenced, if the act is not punishable as the acceptance of a bribe or aggravated acceptance of a bribe, for a bribery violation to a fine or to imprisonment for at most six months. ■

In addition to public officials, the provisions concerning the giving and accepting of bribes are also applied to persons elected to a public office, employees of public corporations and persons exercising public authority. Thus, according to Finnish law, criminal liability for accepting a bribe may also concern a private person who is actually exercising public authority, for example, in order to perform an assignment under a law or decree. Consultants employed in the Ministry for Foreign Affairs' development co-operation projects who are in a contractual relationship with the Ministry do not exercise public authority in the manner indicated by law. However, a consultant's actions in specific situations may be subject to criminal sentencing. If a party offers to reward a consultant for influencing a decision-making body in a project so that the decision-making body grants a subsidy to or purchases a service or goods from said party, and the consultant offers a benefit to the member of the decision-making body of the project, then the party offering a reward to the consultant, the consultant and the member of the decision-making body may all become subject to criminal liability. Giving a bribe to a public official from another country is also a criminal act under the Penal Code.

In addition to government officials, the provisions also apply to municipal officials. Under the Act governing municipal officials, they shall act impartially in their duties and in a manner considered appropriate to their position and duties. Thus, municipal officials may not demand, accept or agree to a financial or other benefit provided for in Chapter 40 of the Finnish Penal Code.

In Finland, Members of Parliament are not considered public officials, but the acceptance of a bribe as a Member of Parliament is specifically criminalised. The provisions concerning members of the Finnish Parliament also apply to members of other countries' Parliaments.

2.3 WHEN IS A BENEFIT RECEIVED WHILE PERFORMING OFFICIAL DUTIES CONSIDERED A BRIBE?

A question arising from time to time in connection with the actions of public officials is what kind of benefits can or cannot be accepted. A ben-

efit is usually a gift, a lunch or a dinner, but it can also be a trip or practically anything. The benefit may have monetary value or it can be immaterial. In respect of suspected offence, the elements to be considered are 1) the benefit, 2) the benefit's effects and 3) whether it undermines the public's confidence in official actions. There are no accurate limits or specifications. Acceptability must always be defined case by case, depending on the circumstances and purpose of giving the gift. A few principles of interpretation can be found in legal practices.

The Supreme Court sentenced a department manager of the military headquarters for bribery violation because he had accepted trips to opera festivals, including accommodation and other hospitality, for himself and his spouse from a company that sold office equipment. In addition, he had participated several times in said company's golf tournaments, at the company's cost. The value of the benefits totalled about EUR 1,700.

In its decision the Supreme Court addressed the following points:

1. The value of a gift or other benefit has no immediate significance; the benefit can be immaterial and without financial value,
2. The gift or other benefit must improve the recipient's position, and
3. The gift or other benefit must have a connection to the public official's actions in service,
4. Actual undermining of confidence is not required; the overall assessment of the circumstances determines whether it looks like the public's confidence in the public official's impartiality had weakened.

The consideration may take into account the necessity of the benefit, matters handled by the authority that concern the party giving the benefit, the recipient's possibilities of influence, the offerer's objectives, conventionality of the benefit, repeated giving and acceptance of the benefit, the importance of the official act for the offerer, the position of the public official and the acceptability of receiving benefits in respect of appropriate performance of duties.

In practice, taking care of public relations is a typical explanation for attending various events that actually can bring benefits for public officials.

In this case, confidence was undermined because procurement of office equipment was being planned at the time when the benefits were given and the benefits were unnecessary with regard to the public official's duties. The Supreme Court gave the following opinion on the duties of senior officials when attending to public and social relations:

"Attending to these duties may require communication that is not directly associated with the official's duties. For example, in long-term personal and social relations, reciprocal hospitality in different forms is customary. Receiving normal hospitality is natural and often necessary in respect of common politeness, but the hospitality must be reasonable."

"It can be expected that hospitality is seldom offered to public officials purely out of unselfish politeness. Entertainment offered by a private company is usually associated with the promotion of its business."

Particular caution in accepting benefits is required of public officials who prepare and decide on public contracts and the benefit is given by a company that is offering services or goods subject to a contract.

The giving or acceptance of the benefit must have a connection with the public official's actions in service. This means that, with the exception of bribery violation, the giving or acceptance of the benefit must have a connection to the public official's possibilities of action in service. The deed can take place during the public official's leisure time or holiday and still influence his or her actions and be considered to undermine the public's confidence in the impartiality of the actions of authorities.

Bribery violation refers to the acceptance of a bribe. For a benefit to be considered a bribe, it may be sufficient that there is a temporal and spatial link between the acceptance of the benefit and the official act.

It is not possible to unambiguously determine the unlawfulness of a gift or other benefit. However, the value of the gift does not have to be financial. In principle, public officials must ensure the independence required by their position, and therefore they must refrain from accepting benefits. The acceptance of even a small benefit may be forbidden. Yet the value of a benefit may demonstrate its exceptional nature and, thus, an

attempt to influence the recipient's actions in service. It is forbidden, for example, to accept trips paid by outsiders or receive discounts or hospitality that are unreasonably generous with regard to the public official's position.

In 2010, the Finnish Ministry of Finance issued guidelines (VM/1592/00.00.00/2010) on hospitality, benefits and gifts. The guidelines aim to set more definite limits for what is allowed and what is not.

In Finland, bribery offences committed by public officials always receive much attention in the media and are generally strongly disapproved of. Aggravated bribery offences automatically lead to the dismissal of the public official who committed the offence.

In public there have been suspicions of bribery associated with sales of products related to the defence industry. In these cases it has been suspected that in order to ensure a deal, a Finnish company has bribed (directly or through consultants or consultancy firms) foreign public officials who were responsible for the procurement of defence equipment.

2.4 BRIBERY IN THE PRIVATE SECTOR

In Finland, bribery in the private sector expressly refers to bribery in business. The provisions of Chapter 30 of the Finnish Penal Code concerning bribery in business and acceptance of a bribe in business forbid bribes that are given or accepted in order to have the bribed person, in his or her duties, favour someone, or to reward the bribed person for such favouring.

In the private sector, the objectives of criminalisation are different compared with the public sector. The object of protection in the private sector is healthy competition, that is, the financial benefit of those engaged in business.

One reason for the criminalisation of corruption is the fact that it is in conflict with the basic principles of a market economy, particularly with free global competition. If authorities do not act impartially and competi-

tion between companies is distorted, corruption undermines confidence in the functioning of the markets. Corruption increases the inefficiency of the economy because it always means extra costs for the company. Until now, there have been very few cases of company level bribery offences in Finland. The low corruption rate has been part of Finland's competitiveness and good international reputation.



Penal Code, Chapter 30: Section 7, Bribery in business

A person who promises, offers or gives an unjustified benefit (a bribe) to

- 1) a person in the service of a business,
- 2) a member of the administrative board or board of directors, the managing director, auditor or receiver of a corporation or of a foundation engaged in business,
- 3) a person carrying out a duty on behalf of a business, or
- 4) a person responsible for solving a conflict between businesses, other parties or a business and another party as an arbitrator

intended for the recipient or another, in order to have the bribed person, in his/her function or duties, favour the briber or another person, or to reward the bribed person for such favouring, shall be sentenced, unless the offence is punishable under Section 13 or 14 of Chapter 16, for bribery in business to a fine or to imprisonment for at most two years.





Penal Code, Chapter 30: Section 7a, Aggravated bribery in business

If in bribery in business:

- 1) the gift or benefit is intended to make the person act in service contrary to his or her duties in a manner which would result in a considerable benefit to the briber or to another person or in a considerable loss or detriment to another person, or
- 2) the gift or benefit is of significant value

and if bribery in business is aggravated also when assessed as a whole, the offender shall be sentenced to imprisonment for aggravated bribery in business for at least four months and at most four years.

Penal Code, Chapter 30: Section 8, Acceptance of a bribe in business

A person who

- 1) in the service of a business,
- 2) as a member of the administrative board or board of directors, the managing director, auditor or receiver of a corporation or of a foundation engaged in business,
- 3) in carrying out a duty on behalf of a business, or
- 4) as an arbitrator resolving a dispute between corporations, other parties or a corporation and the other party

demands, accepts or receives a bribe for himself/herself or another or otherwise takes an initiative towards receiving such a bribe, for favouring or as a reward for such favouring, in his/her function or duties, the briber or another, shall be sentenced, unless the deed is punishable in compliance with Section 1–3 of Chapter 40, for acceptance of a bribe in business to a fine or to imprisonment for at most two years.





Penal Code, Chapter 30: Section 8a, Aggravated acceptance of a bribe in business

If in the acceptance of a bribe in business:

- 1) the offender acts or it is his/her intention to act, as a result of the gift or benefit, in service of the party giving the bribe or of another to their considerable benefit, or to the considerable loss or detriment of another, or
- 2) the value of the gift or benefit is considerable

and if the acceptance of a bribe in business is aggravated also when assessed as a whole, the offender shall be sentenced for aggravated acceptance of a bribe in business to imprisonment for at least four months and at most four years. ■

Bribery through intermediaries is a very common form of bribery in the private sector. In the Finnish Penal Code, such situations are assessed in accordance with stipulations concerning complicity (incitement and implication). A person acting as an intermediary may be a representative of another company, a consultant or advisor or otherwise in a private-law contractual relationship with the party that actually gives the bribe. If the act is deemed to fulfil the criteria of giving a bribe, such intermediaries can also be convicted and sentenced. The nationality of the person giving the bribe has no significance with regard to the realisation of the offence.

In Finland, a legal person may also be made criminally liable and sentenced to corporate fine for offences committed in connection with its operations. A corporate fine may be imposed in cases of bribery in business. According to the Finnish Penal Code, the maximum amount of corporate fine is EUR 850,000. The scope of corporate criminal liability also covers bribery offences committed abroad and targeted at public officials of other countries, such as when a Finnish company directly or through intermediaries bribes a foreign public official. The criminal liability applies to state-owned companies as well as other companies.

In some circumstances, a person sentenced for a bribery offence in business may be prohibited from conducting business.

In addition, the proceeds of a bribe and bribery can be ordered to be forfeited to the State, even if the offender is not identified. The legislation enables the bribe (or a corresponding amount), as well as the proceeds or estimated proceeds of the bribe, to be forfeited to the State in bribery offences committed abroad.

A Finnish court can deal with bribery offences committed abroad by a Finnish citizen or a Finnish company, even if said act is not criminalised in the country in question in a similar way as in Finland.

2.5 WHAT IS CONSIDERED A BRIBE IN THE PRIVATE SECTOR?

The concept of a bribe given in connection with business operations between two representatives of the private sector has not been defined. The preparatory documents of legislation state that any financial benefits could be considered bribes, but also those that involve sentimental value. Normal birthday presents and promotional gifts that are customary in business life are not bribes. In the assessment of acceptability, the financial value of the benefit and its personal value to the recipient are considered. Attention must also be paid to the circumstances, duties and position of the person being bribed.

According to tax legislation, bribes and other similar benefits given for an inappropriate purpose are not tax deductible. Instead, donations to charitable causes and normal promotional gifts are usually tax deductible. From a taxation point of view, other gifts that are associated with the company's business operations and are not bribes are acceptable, providing that relevant taxes are paid.

Bribes are often paid out as remunerations or commissions, or received as discounts. What matters is the actual nature of the payment. In many countries, so-called facilitation payments are customary and they are not criminalised. Facilitation payments are usually relatively small amounts. However, when they are paid or have to be paid often or there are many payers, the accumulated amounts may be very large. According to Finnish law, such facilitation payments are forbidden both in the public and private sectors.

3 OTHER RELEVANT LEGISLATION PERTAINING TO ANTI-CORRUPTION

The Penal Code is not the only part of Finnish legislation that contains important provisions with regard to combating corruption.

3.1 THE CIVIL SERVANTS ACT

In addition to the Finnish Penal Code, the Civil Servants Act also prohibits the acceptance of bribes while performing official duties. According to the Civil Servants Act, public officials must not demand, accept or agree to receive any financial or other benefit if it could undermine confidence in a public official. Compared with the provisions of the Penal Act, this provision defining the general duties of public officials takes a stricter approach to the acceptance of benefits. Other duties of public officials have been discussed above in section 1.2.

Violation of the Civil Servants Act can be punishable as an offence in public office under Chapter 40 of the Finnish Penal Code and can also lead to dismissal. Liability to damages may also arise if the employer has suffered damage as a result of the mistake or negligence.

3.2 THE ACT ON PUBLIC CONTRACTS

Public procurement is one of the most important risk sectors with regard to corruption. Therefore it is important that regulations on public procurement also cover anti-corruption measures.

According to Section 53 of the Act on Public Contracts, the contracting authority shall exclude a candidate or tenderer from the competitive bidding if it, among other reasons, has gained knowledge that the candidate, tenderer, director or any person having powers of representation, decision or control in respect of the candidate or tenderer has been the subject of a conviction by judgement that has obtained the force of *res judicata* and is specified in a criminal record for one or more of the reasons listed below: bribery and aggravated bribery as stipulated in Chapter 16 of the Penal Code or bribery in business as stipulated in Chapter 30. A less serious reason, such as grave professional misconduct, may also lead to exclusion from competitive bidding.

3.3 THE ACCOUNTING ACT AND THE AUDITING ACT

Accounting and auditing are important duties of companies. They are used for the monitoring of companies' operations. In practice, bribery in connection with business operations almost always involves accounting or auditing offences that are committed in order to hide the bribes in the company's accounts and financial statements.

In 2009, the OECD gave a recommendation with guidelines (included as an Annex) on accounting requirements, external auditing and internal controls, ethics and compliance with rules (for more information, see Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions, <http://www.oecd.org/dataoecd/11/40/44176910.pdf>). According to the guidelines on accounting, companies should in their financial statements disclose any substantial liability commitments, and auditors who notice signs of bribery of foreign public officials should report their suspicions to the company management and, when necessary, to the company's supervisory body. Furthermore, companies that have received a report on such bribery from the auditor should respond actively and efficiently. The company management should report such suspicions to law enforcement authorities. According to the recommendation, companies should develop and implement sufficient measures related to internal control, ethics and compliance with rules in order to prevent and detect foreign bribery. Companies should have a company policy that clearly prohibits bribery.

The provisions of the Accounting Act are applied to commercial and professional bodies and include provisions on how business transactions should be entered in the accounts, how the financial statements should be prepared and how the accounting books should be preserved. Parties obliged to keep books must follow good accounting practice. This means, inter alia, that the accounts must be reliable and provide correct and adequate information.

Auditors must comply with good auditing practice and the international auditing standards approved for use in the European Communities. The auditor must make a remark in the auditor's report if the company management is guilty of an act of negligence which could make the company liable to damages, or if the company management has violated a law applicable to said company. In the audit minutes the auditors may at their discretion make remarks to the company management on matters not covered by the auditor's report. Where the qualifications for independent audit do not exist, the auditor must refuse to accept an assignment or withdraw from it.

4 FINLAND'S COMMITMENT TO INTERNATIONAL ANTI-CORRUPTION CONVENTIONS AND OTHER INSTRUMENTS

International anti-corruption conventions are relatively new; the first ones are less than 15 years old. Finland is committed to the anti-bribery conventions of the OECD, the Council of Europe and the United Nations. In Finland, the provisions of the conventions are usually made part of Finnish legislation. More detailed recommendations and interpretation guidelines concerning the conventions have been provided later. Commentaries to the conventions have also been issued. Unlike the conventions, the recommendations, interpretation guidelines and commentaries are soft law. That is, they are not legally binding on the member countries, but they have significance for the interpretation of the conventions. In addition to the above, Finland is also bound by the European Union's set of rules on preventing corruption.

The conventions have been drafted by international organisations and many countries are committed to them. The conventions are treaties that the member countries must follow. Compliance with the conventions is controlled through country monitoring, which involves thorough studying of legislation and its enforcement. The country monitoring carried out by the OECD and the Council of Europe has progressed to the third phase in the OECD and to the fourth phase in the Council of Europe. The UN Convention is the latest treaty, and its monitoring system was initiated quite recently. Country monitoring was performed in Finland in February 2010.

The UN Convention is global with about 160 member countries. The number of member countries in the anti-corruption conventions of the OECD and Council of Europe is significantly smaller. The European Union's set of rules and the aforementioned conventions are discussed briefly in the following. The OECD's other important recommendations are also mentioned.

4.1 THE EUROPEAN UNION

The European Union's legal system includes many documents that discuss anti-corruption related matters. The documents are relatively difficult to manage as a whole. Some of the most important documents are presented hereafter:

4.1.1 The convention on the protection of the European Communities' financial interests and the related Protocol

The convention on the protection of the European Communities' financial interests was drafted in 1997 and it entered into force internationally in 2002. The convention on the prevention of fraud in the European Union has been supplemented by a protocol on the prevention of bribery. With the addition of the protocol and the simultaneous expansion of the scope of the convention, this became the first anti-bribery convention drafted by the European Union. The scope is relatively narrow and applies only to offences concerning the budgets of the European Communities.

In Finland, the convention and protocol were implemented in 2002 by law and decree.

The purpose of drafting the convention was to efficiently promote the protection of European Communities' financial interests through national criminal legislation. Under the convention, fraud affecting these interests must be punishable by effective, proportionate and dissuasive criminal sanctions in every EU country. In addition, the member countries undertake to co-operate in these matters. The anti-bribery protocol to the convention aims for harmonised legislation in the member coun-

tries, particularly in order to combat bribery that involves national public officials or public officials of the European Communities and has or may have a negative effect on European Communities' financial interests. At the moment of drafting the protocol, the penal legislation in member countries basically only covered acts committed by or to national public officials.

4.1.2 Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union

In 1997, the Council of the European Union adopted an Act establishing a convention to prevent bribery involving officials of the European Communities or national officials of its Member States, and at the same time considering the provisions of the convention described above. The new convention entered into force internationally in 2005. Its purpose is to improve judicial co-operation within the European Union. Furthermore, the convention aims to improve judicial co-operation between the Member States in the fight against corruption as a matter of common interest.

The scope of this later convention is more extensive than that of the convention and protocol discussed above, because it covers other offences besides those concerning the budgets of the European Union. In other respects, the content of the provisions is the same in the new and former convention. In Finland, the convention was implemented in 2005 by law and decree.

4.1.3 Joint Action on corruption in the private sector and the EU's framework decision on combating corruption in the private sector

In 1998, the Council of the European Union confirmed a Joint Action on corruption in the private sector. This was based on the idea that comprehensive prevention of international level bribery in the private sector is particularly important, because bribery distorts honest competition, endangers the principles of the openness and freedom of markets - particularly the functioning of the EU's internal market - and is in violation of the publicity and openness of international trade. In Finland, the Joint Action came into force in 2005. As a result, the scope of corporate

criminal liability was extended to the acceptance of a bribe in business. The Council has also approved a framework decision on the prevention of bribery in the private sector. Its content is practically the same as that of the Joint Action.

4.1.4 The comprehensive EU policy against corruption

The document on comprehensive EU policy against corruption was drafted in 2003 as a Communication of the Commission to the Council, the European Parliament and the European Economic and Social Committee. The document states that political commitment to combating bribery is a priority. In addition to financial crime, bribery and corruption are among the offences for which the Council should decide on regulations for approximation of national legislation in the Member States, by agreeing on common definitions, incriminations and sanctions.

4.2 CONVENTION ON COMBATING BRIBERY OF FOREIGN PUBLIC OFFICIALS IN INTERNATIONAL BUSINESS TRANSACTIONS (THE OECD ANTI-BRIBERY CONVENTION)

4.2.1 Central contents of the convention

The anti-bribery convention of the OECD (Organisation for Economic Cooperation and Development) was signed in 1997 and it entered into force internationally in 1999. In Finland it was implemented by law.

The convention is based on recognising bribery in international business relations as a serious moral and political concern. Corruption undermines good governance and economic development and distorts the conditions of international competition. Therefore, the signatory countries are required to implement efficient measures in order to prevent bribery of foreign public officials in international business relations. In particular, they must efficiently criminalise such bribery, in accordance with each country's jurisdiction and other judicial basic principles. In addition to domestic efforts, progress in this area requires international cooperation, monitoring and supervision.

The commitments of the convention primarily concern the Member States. The supervision and monitoring of compliance with the convention are carried out through systematic country monitoring which thoroughly studies each country's legislation and the practical implementation of anti-corruption measures. Based on the monitoring, the OECD gives the Member States country-specific recommendations for measures to correct any detected shortcomings. The Member Countries are obligated to implement the recommended measures.

The principal content of the anti-bribery convention is as follows:

1. THE OFFENCE OF BRIBERY OF FOREIGN PUBLIC OFFICIALS

Each party shall establish that it is a criminal offence under its law to bribe a foreign public official or to instigate or aid an act of bribery of a foreign public official.

"Foreign public official" means any person holding a legislative, administrative or judicial office of a foreign country, whether appointed or elected; any person exercising a public function for a foreign country, including for a public agency or public enterprise; and any official or agent of a public international organisation.

2. RESPONSIBILITY OF LEGAL PERSONS

Each party shall take such measures as may be necessary to establish the liability of legal persons for the bribery of a foreign public official.

3. SANCTIONS

The bribery of a foreign public official shall be punishable by effective, proportionate and dissuasive criminal penalties. Legal persons shall also be subject to effective, proportionate and dissuasive administrative or penal sanctions. The bribe and the proceeds of the bribery of a foreign public official, or the value of property which corresponds to that of such proceeds, shall be subject to seizure and forfeiture.





4. JURISDICTION

Each Member State shall establish its jurisdiction over the bribery of a foreign public official when the offence is committed wholly or partly in its territory. In addition, each Member State which has jurisdiction to prosecute its nationals for offences committed abroad, shall take such measures as may be necessary to establish its jurisdiction to do so in respect of the bribery of a foreign public official.

5. ENFORCEMENT

Investigation and prosecution of the bribery of a foreign public official shall not be influenced by considerations of national economic interest, relations between states or the identity of the natural or legal persons involved.

6. STATUTE OF LIMITATIONS

Any statute of limitations applicable to the offence of bribery of a foreign public official shall allow an adequate period of time for the investigation and prosecution of this offence.

7. MONEY LAUNDERING

Each Party which has made bribery of its own public official a predicate offence for the purpose of the application of its money laundering legislation shall do so on the same terms for the bribery of a foreign public official, without regard to the place where the bribery occurred.

8. ACCOUNTING OFFENCES

Each Party shall take such measures as may be necessary regarding the maintenance of books and records, financial statement disclosures and accounting and auditing standards, to prohibit the establishment of off-the-books accounts, the making of off-the-books or inadequately identified transactions, the recording of non-existent expenditure, the entry of liabilities with incorrect identification of their object, as well as the use of false documents for the purpose of bribing foreign public officials or for hiding such bribery.

9. MUTUAL LEGAL ASSISTANCE

Each Party shall, under its laws and relevant treaties and arrangements, provide prompt and effective legal assistance to another Party for the purpose of criminal investigations and proceedings brought by a party





concerning offences within the scope of this convention and for non-criminal proceedings within the scope of this convention brought by a Party against a legal person. A Party shall not decline to render mutual legal assistance for criminal matters within the scope of this convention on the grounds of bank secrecy.

10. EXTRADITION

Bribery of a foreign public official shall be deemed to be included as an extraditable offence under the laws of the Parties and the extradition treaties between them. If a Party which makes extradition conditional on the existence of an extradition treaty receives a request for extradition from another Party with which it has no extradition treaty, it may consider this convention to be the legal basis for extradition in respect of the offence of bribery of a foreign public official.

Each Member State shall assure either that it can extradite its nationals or prosecute its nationals for the offence of bribery of a foreign public official. A Party which declines a request to extradite a person for bribery of a foreign public official solely on the grounds that the person is its national shall submit the case to its competent authorities for the purpose of prosecution. ■

4.2.2 Complementary guidelines to the OECD Anti-Bribery Convention

The OECD has issued a number of recommendations that complement the Anti-Bribery Convention. The convention and its reinforcement are interpreted via these recommendations. In practice, the most important interpretation recommendations and their application in the Member Countries are thoroughly discussed during the country monitoring performed by the OECD's Anti-Bribery Working Group.

The most important recommendations and guidelines complementary to the Anti-Bribery Convention are the following:

1. Commentaries to the OECD anti-bribery convention;
2. Council recommendation for further combating bribery of foreign

- public officials in international business transactions from 2009 and Annexes I and II thereto;
3. Recommendation of the OECD Council on tax measures for further combating bribery of foreign public officials in international business transactions;
 4. OECD Council recommendation on bribery and officially supported export credits;
 5. Recommendation of the OECD Council on enhancing integrity in public procurement and Annex to the recommendation;
 6. Recommendation of the OECD Council on principles of transparency and integrity in lobbying.

The documents are available on the OECD homepage, at the following addresses:

<http://www.oecd.org/dataoecd/4/18/38028044.pdf>

<http://www.oecd.org/document/42/0,3746,>

en_2649-37447-41799402_1_1_1_37447,00.html

The most central items in the aforementioned recommendations and guidelines include the following:

1. Bribery of foreign officials should be criminalised.
2. Officials in service abroad should be able to provide companies originating from the same country but operating abroad with information about the convention and the aforementioned additional documents, as well as the national legislation pertaining to bribery crimes in situations where the company is requested to give a bribe.
3. A company should also be sanctioned for a bribery offence.
4. Criminal liability should also apply to parties used as intermediaries.
5. Annex II contains guidelines on prevention and detection of foreign bribery for companies.
6. Bribes should not be tax deductible.
7. The applicants of public export credits should be provided with information about the sanctions applied according to the national criminal legislation for bribery offences that take place in international business relationships.

8. Those applying for export credit should issue a pledge and a statement that they, or their representatives, have not participated in bribery and are not recorded on the black lists of international financial institutions.
9. All payments connected to export credits should be cancelled, compensated or repaid, if bribery takes place after the credit, collateral or other form of support has been granted.
10. Integrity in public procurement should be ensured at all stages of the public procurement processes.
11. With regard to lobbying, when drafting rules on transparency and integrity, the Member States should take into account the principles of transparency and integrity in lobbying as recorded by the OECD.

Legislation has been modified in Finland, due to the OECD Anti-Bribery Convention and the recommendations for its interpretation, inter alia by extending the purview of bribery crimes to foreign public officials, extending the scope of corporate criminal liability to bribery and recording the non-deductibility of bribes in taxation - a practice previously based on legal praxis - in legislation.

The OECD has specifically requested that the public and private sectors' awareness of these recommendations that complement the convention should be promoted. Officials in the foreign affairs administration should communicate information about the convention, its annexes and legislation on bribery offences to Finnish businesses and other parties operating abroad. As the same obligation applies to all countries that have joined the OECD convention, this can ensure that awareness of the requirements of international anti-bribery operations is as extensive as possible.

4.2.3 The OECD's recommendations to Finland

In autumn 2010, the OECD's Anti-Bribery Working Group performed its third country monitoring of Finland. Finland received several recommendations for the implementation of legislation and the aforementioned recommendations. Generally, it was recommended that the public and private sectors' awareness of the following would be improved: the criminalisation of bribery of a public official abroad, the criminalisation of such bribery through intermediaries and the criminal liability of legal persons in bribery offences committed abroad.

With regard to development aid agreements, the recommendations concerned thorough background checks of contract partners before signing agreements and clarification of the corruption provisions in development aid agreements. In respect of recommendations on official development aid, it can be stated that the implementation of the recommendations began in spring 2011 and the recommendations have largely been taken into account in the development co-operation agreement section of this handbook.

As regards public sector contracts, the Anti-Bribery Working Group recommended the use of international black lists by authorities responsible for public contracts. Here it should be noted that the use of international black lists is currently being considered in Finland. The main problem associated with the introduction of the black lists is how to ensure their accuracy. They must be reliable, comprehensive and up-to-date. It seems that more extensive implementation of such lists would require uniform action within the European Union. In addition, the working group gave recommendations on officially supported export credits to Finland's official export credit agency, Finnvera.

4.3 THE COUNCIL OF EUROPE'S ANTI-CORRUPTION CONVENTIONS

Founded in 1949, the Council of Europe is Europe's oldest and largest political co-operation and human rights organisation. Its objectives include the protection and improvement of human rights and the promotion of the development of democracy and rule of law.

The Council of Europe's policy towards tackling corruption consists of three elements. It:

1. uses conventions to set certain standards for combating corruption;
2. monitors the enforcement of the conventions in the member states; and
3. when necessary, provides technical assistance and co-operates with interested states and institutions.

The Council of Europe's basic anti-corruption documents are:

1. The Twenty Guiding Principles for the Fight against Corruption (1997)
2. The Criminal Law Convention on Corruption (1999) and Additional Protocol to the Criminal Law Convention on Corruption (2003)
3. The Civil Law Convention on Corruption (1999)
4. Codes of Conduct for Public Officials (2000)
5. Funding of Political Parties (2003)

In Finland, penal and civil law conventions on bribery have been implemented by law and decree. The Finnish legislation met most of the requirements of the Council of Europe's Criminal Law Convention on Corruption and its Additional Protocol. Finland has not implemented the provisions on trading of influence and protection of whistleblowers and witnesses. When Finland joined the civil law convention it was considered that the Finnish Damages Act and some other Acts meet the requirements of the civil law convention.

Compliance with the Council of Europe's criminal and civil law conventions is monitored by an anti-corruption group of states, "Group of States against Corruption" (GRECO). The group started its work in 1999. GRECO also supervises the implementation of the resolution concerning the aforementioned principles on the prevention of bribery. Countries outside Europe can also join the working group, providing that they commit themselves to implement the 20 basic principles of anti-corruption. Currently GRECO has 49 member states.

GRECO performs country monitoring in order to supervise the member states' compliance with the conventions. Its groups of experts conduct a thorough evaluation of each country's legislation and administration, mainly by means of surveys and visits. Based on the resulting country reports, GRECO's plenary meeting gives each country recommendations for measures on the basis of detected shortcomings. The recommendations should be implemented within the specified time limit. So far, three country monitoring rounds have been completed. Finland has received some recommendations concerning detected shortcomings.

GRECO's recommendations to Finland have resulted in amendments to election financing law and the Penal Code and preliminary investigation of some suspected offences.

4.4 THE UNITED NATIONS CONVENTION AGAINST CORRUPTION

The United Nations Convention against Corruption entered into force internationally in 2005. It is the first worldwide anti-corruption convention. So far the convention has been signed by 160 countries. The convention is important, amongst other things, because so many countries around the world with different legal systems have signed it. Extensive international and efficient national enforcement of the convention is expected to efficiently combat corruption. The convention pays particular attention to international co-operation. In Finland, the convention was implemented by law and decree in 2006.

The purpose of the convention is to promote and strengthen measures to prevent and combat corruption more efficiently than before. Further objectives of the convention are to promote, facilitate and support international co-operation and technical assistance in preventing and combating corruption and to promote integrity, responsibility and appropriate management of public assets.

The convention includes obligations that concern preventive measures, criminalisation, sanctions, damages, seizure, confiscation, jurisdiction, liability of legal persons, protection of witnesses and victims, implementation systems, international co-operation, recovery of assets that have been illicitly transferred into another country, technical assistance, collection, exchange and analysis of information and a mechanism for the supervision of implementation.

The extensive provisions on preventive measures and the provisions on asset recovery are important new elements of the convention. The chapters on criminalisation, law enforcement and obligations related to criminal procedures are also important.

Similar to the enforcement of the conventions of the OECD and the Council of Europe, supervision of the enforcement of the UN Convention against Corruption is based on country monitoring. For Finland it has been stated that in general, Finland has very efficiently implemented the articles of the convention. The monitoring of Finland resulted in some comments. Finland has not criminalised trading of influence and illicit enrichment (both specified as voluntary in the convention). In Finland it is not possible to dismiss members of Parliament on the basis of a bribery offence, the maximum fine for legal persons is relatively low, Finland does not have a specific programme for the protection of witnesses and whistleblowers, and public officials do not have a general obligation to report corruption offences. Not all the provisions of the convention are binding; some of them are optional. The articles considered problematic in respect of the Finnish legal system are recommendations, which is why they have not caused any direct need to change legislation.

5 OTHER INTERNATIONAL ANTI-CORRUPTION CONVENTIONS

Finland is committed to the international anti-corruption conventions described in the section above. In addition to these, there are many other international anti-corruption conventions, which Finland has not signed and is not involved in. The most important regionally limited conventions or mechanisms include the following:

1. Anti-Corruption Action Plan for Asia and the Pacific
2. African Union Convention on Preventing and Combating Corruption and
3. Inter-American Convention against Corruption.

In practice, the contents of most international anti-corruption conventions are very similar. Many countries have undertaken to implement several conventions simultaneously, and the scopes of the conventions are often largely overlapping. The texts of the conventions are usually made very open so that as many countries as possible can accept them. The essential content of the aforementioned conventions are described below.

5.1 ANTI-CORRUPTION ACTION PLAN FOR ASIA AND THE PACIFIC

The Anti-Corruption Action Plan for Asia and the Pacific was jointly developed by the Asian Development Bank and the OECD. Altogether 28 countries in the area are committed to the plan. It consists of three pillars:

1. Developing effective and transparent systems for public services;

2. Strengthening anti-bribery actions and promoting integrity in business operations; and
3. Supporting active public involvement in anti-corruption work.

Each pillar includes several goal-oriented measures that should be implemented nationally. A country monitoring system similar to that of the OECD has been developed for the implementation of the plan.

5.2 AFRICAN UNION CONVENTION ON PREVENTING AND COMBATING CORRUPTION

So far, 31 countries have ratified the convention for the African Union Member States. The convention was drafted in 2003 and entered into force in 2006. The convention represents African states' opinion on how corruption could be combated and prevented at regional level, how corruption should be criminalised, how international co-operation should be improved and how assets lost through bribery offences can be recovered. The convention is relatively extensive and covers bribery in the public and private sectors. The supervision of the implementation of the convention is based on each country's own reports on the country's progress in the implementation of the convention.

5.3 INTER-AMERICAN CONVENTION AGAINST CORRUPTION

This anti-corruption convention for the members of the Organisation of American States was drafted in 1996. It has been signed by all the 33 member states of the organisation. The purpose of the convention is to strengthen anti-corruption development in the member states through measures and actions to prevent, detect, punish and eradicate corruption. Moreover, the convention aims to facilitate and regulate co-operation among the member states in combating corruption. The implementation of the convention is monitored by analyses conducted by experts. The content of the convention includes criminalisation of corruption in the public and private sectors, criminalisation of illicit enrichment, money laundering and concealment of assets, improvement of international co-operation and articles on the recovery of illicitly acquired assets.

6 ANTI-CORRUPTION PROVISIONS AND PROVISIONS AIMING FOR THE PREVENTION OF ABUSE IN AGREEMENTS CONCERNING INTERNATIONAL DEVELOPMENT CO-OPERATION

6.1 BILATERAL DEVELOPMENT CO-OPERATION

6.1.1 Intergovernmental agreements

Agreements between the governments of Finland and the partner country constitute the legal basis for development co-operation projects and programmes between the two countries. The basic principles of co-operation with long-term partner countries are specified in the framework agreement. More detailed principles of co-operation, the distribution of work and each partner's responsibilities in the project or programme are agreed on in the project or programme agreement that complements the framework agreement. If bilateral development co-operation projects or programmes are carried out with other than long-term co-operation partners, all the terms and conditions of co-operation are agreed on in the

project or programme agreement. The agreements authorise the parties to intervene in any detected abuse.

6.1.2 Contractual clauses concerning the basic principles of co-operation and the prohibition of corruption, and their meaning

The framework agreements currently in force have mainly been drafted in the 1980s and 1990s, and most of them do not have clear provisions aiming for the prevention of corruption. However, the current framework agreement model includes a provision on preventing corruption and intervening in it.

The Principles of Cooperation are listed at the beginning of all agreements concerning individual projects and programmes. Co-operation must be based on democratic principles and respect for human rights, good governance and the rule of law. In addition, each project or programme should be carried out as a dialogue and in compliance with the principle of transparency. The basic principles express the values that the co-operation is built on. In addition, project and programme agreements include the prohibition of corruption in connection with procurement and a provision on appropriate accounting of the funds of the project or programme. The funds must not be subject to any illegal or corruptive practices. The joint financing document of jointly financed projects or programmes (such as the Joint Financing Arrangement or Memorandum of Understanding in budget support or sector budget support programmes) usually contains more detailed provisions on appropriate financial control and prohibition of corruption.

The basic principles and other clauses of the agreement aiming for the prevention of corruption (including the provisions of the joint financing documents) are legally binding to the parties of the agreement. Under project and programme agreements, Finland and the partner country have the right to suspend their payments to the project or programme if it turns out that the other party has not complied with these provisions. In addition, Finland has the right to claim the repayment in full or in part of the Finnish contribution if it is found to be misused or not satisfactorily accounted for. However, the primary procedure is to discuss the situation

with the partner country and any other financiers and try to resolve the matter through less severe measures.

6.1.3 Reporting and audit procedures and informing about the project

The reporting and auditing procedures of project and programme agreements vary slightly depending on the project and programme. It is often agreed that the Competent Authority in the partner country or the authority implementing the project/programme reports to Finland on a regular basis (every six months, for example) on the progress of the project and its financial management. A consultant is often used to support the reporting by authorities if the project or programme includes a component of technical assistance. The details of reporting are usually described in the project documentation or the joint financing document. When preparing a project or programme, it must be ensured that the reporting provisions included in the project documentation or joint financing document are clear and adequate in respect of the supervision of the project or programme. In sector budget support agreements, budget support agreements and projects where direct financial aid is provided to be used by the partner country, the payment of aid is tied to acceptable reporting on finances and progress.

The purpose of the reporting is to provide those responsible for the monitoring and control of the project or programme with sufficient information in order to perform the monitoring and control duties. The reports are used for monitoring the progress of the project or programme and appropriate use of funds. Reading the reports is particularly important in sector budget support and budget support programmes and projects where funds are transferred directly to be used by the partner country. These projects and programmes often involve a higher than usual risk of abuse, because there are more users of funds and more user levels compared with conventional projects. Abuse may also be suspected when reports do not arrive in time or they are incomplete: in this event, an investigation of the situation may be requested.

Under intergovernmental agreements, audits of the accounts and use of funds can be conducted whenever Finland or the partner country so wish-

es. In agreements concerning sector budget support, budget support or other funds provided to be used by the partner country it is also required that the competent authority in the partner country provides Finland with an annual auditors' report. The auditor must be officially authorised and independent with regard to the project.

In development co-operation projects, the principle of good governance also means that the implementation of projects and programmes is as open and transparent as possible. The parties must inform each other of any important events which might affect the implementation and ensure that all relevant authorities and organisations are informed of the project or programme. The parties are encouraged to publish information about the project or programme in order to attract public interest.

6.1.4 Contractual clauses concerning procurement

Purchases concerning development co-operation are made either by Finland or the partner country. Procurement procedures must conform to good procurement practice and generally accepted principles. This primarily refers to transparent and non-corrupt procedures.

The agreement models concerning project or programme agreements include anti-corruption clauses that are based on the recommendations issued by the OECD and DAC (Development Assistance Committee). The first contractual clause is targeted at the public officials of the country carrying out the procurements. The contractual clause forbids any acceptance of a bribe or other benefit that could be understood as an illegal or corrupt practice. The possible sanctions concerning a public official who has accepted a bribe or other benefit are prescribed in the national legislation of the public official's country. The target group of the second clause are those possibly offering or giving bribes, usually tenderers taking part in competitive bidding. According to this clause, the partner responsible for each purchase - Finland or the partner country - shall include a provision in the invitations to tender and the procurement contracts, specifying that the tender will be rejected and any possibly signed contracts will be cancelled in the case that any illegal or corrupt practices have been connected with the award or execution of the contract. In addition, the supplier that has committed bribery shall

compensate the buyer for loss or damage arising from the cancellation of the contract.

In negotiating a project agreement with a new partner country, the background of the clauses and the DAC recommendation must be explained to the partner country's representative whenever necessary. It must also be explained to the representative of the partner country that these are standard clauses that Finland includes in project and programme agreements with all partner countries.

PROCUREMENTS MADE BY FINLAND

If Finland makes procurements, the clause on good practice in procurement means that the procurement is governed by Finnish procurement legislation and the Ministry for Foreign Affairs' own procurement guidelines. The existing competitive situation must be utilised in the procurement, all tenderers must be treated equally and without discrimination, and the procedure must be transparent and observe the requirements of proportionality. Consulting services for the needs of development co-operation projects constitute a significant part of the Ministry's purchases.

The purpose is to minimise situations that offer opportunities for corruption. This is done by means of detailed instructions, transparency and an evaluation team of several people that normally assesses the offers. Where possible the team has members both from Finland and the partner country.

In the procurement process, particular attention must be paid to the question of disqualification. According to Section 27 of the Finnish Administrative Procedure Act, officials or other employees shall not participate in the consideration of a matter or be present during such considerations if they are disqualified. Officials and other employees are responsible for ensuring that they do not participate in the handling of matters where they are disqualified. In addition, they must inform their supervisor about this. In matters relating to procurement, the handling of matters refers to preparing requests for bids, processing offers after their reception, making the procurement decision and drafting the procurement agreement.

Grounds for disqualification may arise when a decision is being made on a matter in which the public official or employee or his or her close relative is an interested party. Furthermore, a public official or employee is disqualified if the outcome of the decision could be of particular benefit or detriment to him or her or a close relative. As a general rule, public officials or employees are also always disqualified if whenever there is lack of confidence in their impartiality for another particular reason. If a consultant who is in a contractual relationship with the Ministry for Foreign Affairs takes part in the evaluation of offers, the consultant must not have such commitments to the bidders that could make the impartiality of the preparatory work questionable.

If bribery or attempted bribery is detected at any stage of a procurement process, the offer is immediately rejected on the basis of the provision in the invitation to tender. Moreover, according to the Finnish Act on Public Contracts, the contracting authority shall exclude a candidate or tenderer from the competitive bidding if the procurement unit has gained knowledge that the candidate or tenderer or any person having powers of representation, decision or control in respect of the candidate or tenderer has been the subject of a conviction by judgement that has obtained the force of *res judicata* and is specified in a criminal record for a bribery offence or other financial offence listed in Section 53 of the Act on Public Contracts, such as tax fraud. The Finnish Act on Public Contracts does not require the authorities to demand a statement of convictions from all tenderers. However, it requires careful consideration and activity in the event that there is reason to suspect the existence of a reason for exclusion.

Based on its monitoring of Finland's procedures, the OECD's Anti-Bribery Working Group has recommended that Finland pay more attention to background checks of parties that apply for financing for development. The official in charge of the procurement process must consider in each case of competitive bidding whether the winner of the competitive bidding or its representative will be required to submit a statement of convictions before the procurement contract is drafted. When processing a statement of convictions, it must be acknowledged that a statement of convictions is sensitive data as referred to in the Finnish Personal Data Act, and it must be handled in accordance with the guidelines of the Min-

istry. A tenderer may also be excluded from competitive bidding if it is guilty of serious misrepresentation in supplying information on itself to the contracting authority or has not supplied such information.

According to the Finnish Act on the Openness of Government Activities, all offers enter the public domain after the signing of the contract. After this anyone interested may see the documents related to the bid and the offers made by other companies. The right of an interested party, such as a tenderer, to receive information is broader than general access. As a general rule, information about all the relevant documents that affected the decision-making must be made available to interested parties after the bidding has been resolved and the procurement decision made. However, any confidential document details, such as commercial and professional secrets, do not enter the public domain at any stage of the procurement process or thereafter. The extensive openness and freedom of access aims at ensuring public confidence in the decisions made by the authorities.

PROCUREMENTS MADE BY CO-OPERATION PARTNER COUNTRIES

Increasingly often the partner country carries out procurements using the development co-operation funds provided by Finland. Many project and programme agreements include an element stipulating that, in addition to technical assistance, the partner country is issued financial aid to use for procurements in accordance with the programme document, often supported by supervision and guidance from a consultant. In sector budget support the co-operation partner country is responsible for nearly all implementation.

Intergovernmental agreements also obligate the partner country to observe good procurement practice and generally accepted principles in procurement. Good procurement practice is a general concept, the most important elements of which are impartiality and competitive bidding in procurement operations. When the partner country is responsible for procurements, that country's own public procurement laws and regulations are applied. If the country has no laws or regulations on public procurement or they are considered insufficient to ensure good procurement practice, it can be agreed that other procurement guidelines are applied, such as those of the EU or World Bank. As a part of the rewriting of the handbook on development cooperation agreements, the Ministry for Foreign Affairs will prepare guidelines on situations in which it should be required that the officials in

the partner country make use of the international financial institutions' black lists in their own procurement processes.

In all cases, the partner country must include a contractual clause in invitations to tender and procurement contracts, specifying that the tender will be rejected and any possibly signed contract will be cancelled in case any illegal or corrupt practices have been connected with the award or execution of the contract. In addition, the supplier that has committed bribery shall compensate the buyer for loss or damage arising from the cancellation of the contract.

Additionally, when the co-operation partner country is making procurements, the parties must agree that Finland or a third party authorised by Finland (such as the auditor) has access to all records and documents related to procurements throughout the procurement process and the duration of the contract. This means that, from the beginning of the procurement process, Finland has the right to receive information concerning the drafting of procurement documents, the opening of tenders, all the processing of tenders, the drafting of a procurement decision or contract, any complaints by tenderers and compliance with the contract during its duration. This also applies to those parts of the documents that are considered business or professional secrets.

6.1.5 Contracts between the Ministry for Foreign Affairs and consulting companies or other service providers

The consultant's work is an important part of the implementation and success of a development co-operation project. The consultant acts as an unofficial contact person or organisation between Finland and the co-operation partner country. Therefore, it is essential that the consultant is committed to the objectives of the co-operation. As a person working in the project, the consultant is an expert in detecting any abuse or corruption in the project. The consultant is obligated to report such observations to the public official responsible for the project.

The public official or employee responsible for the project or programme must keep in mind that the consultant is not a public official or an employ-

ee of a public corporation. Therefore, public administrative duties or duties involving the exercise of official authority must not be transferred to the consultant, such as deciding on government subsidies or making other administrative decisions. It is the responsibility of the public official/employee to supervise that the consulting company in contractual relationship with the Ministry and its consultants carry out the assignment as agreed. Public officials or employees may be made criminally liable or and/or liable for damages if they have neglected their duty to supervise.

In accordance with the consultancy contract signed with the consulting company or other organisation, the consultant shall comply with the law of the co-operation partner country and respect its customs. Matters related to the consultancy contract relationship are governed by Finnish law. In addition, in accordance with the consultancy contract, the consulting company and its consultants must comply with any intergovernmental agreements concerning the project or programme. This means that the consultant's work must be in harmony with the general principles of development co-operation work, such as the promotion of good governance.

Large sums of money are transferred between Finland and the partner country in development co-operation projects and the consultant may have been defined responsible for the management of the project funds in the competitive bidding. The contract between the consultant and the Ministry for Foreign Affairs makes the consultant responsible for ensuring that development co-operation funds are properly administered. The consultant shall provide the Ministry with progress reports and financial reports of the project, drafted in co-operation with the co-operation country's implementing authority, as well as any other reports required by the Ministry. In addition, the annual statement of accounts shall include the auditor's statement confirming that the funds have been administered in accordance with good accounting practice and the costs invoiced to the Ministry have been incurred from carrying out the tasks required by the contract.

Should the consultant neglect his or her duties, such as managing the development co-operation funds as per the consultancy contract, the Ministry is entitled to request the consulting company to replace the consultant on the project or to cancel the contract. Before the cancellation of the consultancy contract, the Ministry for Foreign Affairs must submit a writ-

ten complaint to the consulting company specifying any grounds for the cancellation and reserve a reasonable amount of time for the consulting company to respond to the complaint. If the consulting company does not rectify its breach of the consultancy contract within a reasonable period of time, the Ministry for Foreign Affairs may have the right to cancel the consultancy contract.

It can also occur that a consultant who has a contractual relationship with the Ministry for Foreign Affairs commits an act of corruption. A clause to prevent misuse of funds by the consultant is also included in the consultancy contract, under which the Ministry for Foreign Affairs may terminate the contract if the consultant or a subconsultant has given or gives or has offered or offers bribes or other forbidden incentives that are considered or could be considered as an illegal or corrupt practice. In such cases the consultant shall compensate the Ministry for any loss or damage incurred. Bribery of a Finnish or foreign public official is a criminal act under the Finnish Penal Code and may lead to criminal liability.

In addition to companies providing consultancy services, projects may be carried out by government agencies or institutions. In the assignment contract, the parties agree that if the government agency or institution uses external resources, it undertakes to follow the same terms and procedures as observed by the Ministry when purchasing external services in development co-operation projects, and to comply with the Finnish procurement regulations. The government agency or institution must, for example, include an anti-corruption clause in invitations to tender and procurement contracts.

6.2 MULTILATERAL DEVELOPMENT CO-OPERATION

6.2.1 Preparation of financing agreements

Development co-operation is also carried out by supporting development co-operation projects of different multilateral organisations or by general grants for the organisation's work. In this case, Finland acts as the financier and the organisation receiving the grant has the actual planning and

implementation responsibility. Multilateral co-operation is carried out with international organisations and other intergovernmental groups, such as regional development banks and organisations. Before deciding on grants provided by Finland and signing the agreement, it must be ensured that the recipient's accounting and auditing systems are reliable and it has sufficient procurement capacity to administer the grant. Evaluations conducted by a reliable party, such as the EU Commission, can be used in the assessment.

Negotiations with international organisations and other intergovernmental groups are usually based on the Ministry for Foreign Affairs' financing agreement model. Exceptions to this are the UN, the World Bank and the WTO, which have their own established agreement models, reporting procedures and procurement regulations that comply with good procurement practice. Nevertheless, the public official responsible for the agreement negotiations must ensure that the reporting rules included in the agreement enable the Ministry to receive the reports it needs to be able to supervise the use of the funding. In addition, it must be ensured that the organisation's agreement model is in harmony with the Ministry's financing agreement model in respect of provisions concerning misuse of funds.

6.2.2 The most important anti-corruption provisions in the Ministry for Foreign Affairs' financing agreement model

The Ministry's financing agreement model includes a provision according to which the administration of the funds shall comply with professionally accepted bookkeeping rules and practices. The recipient shall ensure that no illegal or corrupt practices relate to the use of the Finnish contribution, including the bribery of foreign public officials.

As regards reporting, it is agreed that the recipient shall provide the Ministry with a written final report on the use of the funds within three (3) months of the completion of the project. The report shall include an audited financial statement on the use of the funds. If more than one payment is made, the parties usually agree on intermediate reporting, in addition to the final report. In order to receive the next payment,

the recipient must provide a progress report, a statement of accounts regarding the costs covered by the Ministry's funds for the foregoing period and a budget and action plan for the upcoming period. The agreement model also includes a provision according to which the Ministry has the right to carry out any inspection or audit in respect of the use of the funds. In the agreement negotiations it is important to have this included in the agreement in order to ensure the possibilities for supervision.

According to the agreement model, all procurements shall be made in accordance with generally accepted procurement principles and good procurement practice. The contractual clause forbids any acceptance of a bribe or other benefit that could be understood as an illegal act or corruption. In addition, the recipient must include an anti-corruption clause in invitations to tender and contracts.

The agreement model reserves the Ministry the right to suspend payments or claim repayment in full or in part including the interest accrued to the contribution if the funds are found to be misused or not satisfactorily accounted for.

6.3 DECISIONS ON DISCRETIONARY GOVERNMENT TRANSFERS AND AGREEMENTS ON THE USE OF DISCRETIONARY GOVERNMENT TRANSFERS

6.3.1 Deciding on discretionary government transfers

The Ministry for Foreign Affairs also grants development funds to NGOs and the private sector. The granting of funds is governed by the Act on Discretionary Government Transfers. Similar to granting financing to an international organisation, it must be ensured that the NGO or company can reliably administer the funds. If a discretionary government transfer is granted to a domestic party, no separate agreement is signed on the financing. The anti-corruption provisions are included in the decision on discretionary government transfer. The recipient must undertake to follow its terms and conditions before the financing begins.

The decision on the discretionary government transfer must indicate the intended use of the discretionary government transfer and the acceptable expenses for which the discretionary government transfer can be used. The use of the discretionary government transfer is regulated by, for example, the conditions on making purchases with the funds. The authority granting the discretionary government transfers must, in compliance with the Act on Discretionary Government Transfers, supervise the use of the funds. In order to enable this supervisory task, conditions regulating reporting and bookkeeping are included in the decision on the discretionary government transfer. According to the Act on Discretionary Government Transfers, the authority granting the discretionary government transfers has the right to audit the activities and finances of the recipient of the transfer, as is necessary for the supervision of the funds and to recover the transfer in the case funds are found to be misused. The decision on the discretionary government transfer includes the clauses on the Ministry's right to carry out audits and on recovering the transfer funds.

The decision on the discretionary government transfer must also include a contractual clause on the prohibition of corruption and other illicit activities, including bribery of foreign public officials. The prohibition of bribery of foreign public officials also applies to any possible subcontractors and other local representatives of the recipient.

When granting discretionary government transfers, attention should be paid to background checks of the applicants and their responsible persons and to the extent to which the project's budget corresponds to the planned project activities. Depending on the nature of the grant, the applicant must be asked to specify in its application for a discretionary government transfer whether it or its responsible persons have been convicted and sentenced for bribery offences.

As a result of decisions on discretionary government transfers, development co-operation funds are channelled to the private sector through programmes such as the Finnpartnership business partnership programme and the regional programme Energy and Environmental Partnership, EEP. The business partnership programme is administered by Finnfund Oy. Development co-operation funds are also channelled to the private sector through such measures as financing by Finnfund and concessional credits.

If funds are granted to an international NGO, a non-Finnish company or another non-Finnish party, an agreement on the use of the discretionary government transfer is needed in addition to the decision, as a Finnish decision cannot be enforced abroad.

6.3.2 Agreement with international non-profit organisations

The Ministry for Foreign Affairs' Civil Society Unit (KEO-30) is responsible for the co-ordination of funds granted to international NGOs. Sometimes it may be necessary to grant funds from other units' funds.

A specific agreement model has been developed for international NGOs. Its anti-corruption provisions are largely similar to those included in the Ministry's financing agreement model. Some matters, such as the Ministry's auditing right or recovery of funds, are described in more detail than in the financing agreement model. There is a provision on procurement, according to which the organisation must provide a description of its procurement procedures whenever necessary. Direct award of contracts is not allowed if the value of the purchase exceeds a certain amount of euros.

6.3.3 Funds for local co-operation

The fund for local co-operation is a specific agreement type and form of financing. It is a financing instrument for missions engaged in development co-operation or for roving ambassadors. It can be used to help the local civil society to carry out target-oriented projects. Funds for local co-operation can also be used to support such co-operation between actors in the host country and Finnish private sector that has positive development effects.

These projects involve drafting a standard agreement which includes provisions on reporting and payment (related to the supervision of the use of the funds) and on auditing that meets the requirements of the host country's authorities, if the annual payments in the project exceed EUR 20,000. In addition, the agreement must include a provision on the right of the representatives of the mission or the Ministry to inspect the operations or finances of the recipient.

The contractual clauses on the administration of the funds and compliance with good procurement practices are similar to those included in financing agreements signed with international organisations. In addition, the recipient must include a clause in invitations to tender and procurement contracts specifying that the tender will be rejected and any possibly signed agreements will be cancelled in the case that any illegal or corrupt practices have been connected with the award of the contract or during the contract period.

7 INTERNAL AUDITING IN DEVELOPMENT CO-OPERATION

7.1 INTERNAL AUDITING

According to the international definition of internal auditing (The Institute of Internal Auditors), internal auditing is an independent, objective assurance and consulting activity. It is designed to add value and improve an organisation's operations. It helps an organisation to accomplish its objectives by providing a systematic approach to evaluate and improve the effectiveness or risk management, control and governance processes. Internal auditing helps the management of the organisation to arrange internal control by evaluating the standard of control and giving recommendations on its improvement.

There is no single comprehensive definition for internal control. In general, internal control refers to procedures and measures within an organisation that aim to ensure the lawfulness and efficiency of operations and the achievement of goals and objectives. Internal control consists of many elements at different levels of the organisation, such as authorisation to approve, distribution of duties, supervision and controls included in the accounting and management systems. Internal control is arranged differently in different organisations. It depends on elements such as the size, ownership, structure and line of business of the organisation and the nature of its operations. However, what matters is the efficiency of internal control, not the way it is arranged. Efficient internal control can prevent corruption and misuse.

Due to its independent nature, internal auditing cannot be an operational actor in an organisation or project. Therefore, the arranging of internal control cannot be the task of internal auditing. The management of the organisation or the operational actor in the project is responsible for organising adequate internal control and appropriate risk management and, through them, is also responsible for the prevention of corruption and misuse. Internal auditing, on the other hand, evaluates the efficiency and adequacy of internal control and risk management and makes proposals to improve them. Thus, internal auditing has an indirect role in the prevention of corruption.

The powers and duties of the Unit for Internal Audit and Evaluation of the Ministry for Foreign Affairs of Finland are specified in the Rules of Procedure of foreign affairs administration (HEL7099-2).

7.2 INTERNAL AUDITING IN DEVELOPMENT CO-OPERATION

In development co-operation, internal auditing is performed on bilateral development co-operation projects, including projects of NGOs. In addition, the control of sector programmes and areas of focus that have arisen through the EU fall within the sphere of internal auditing. The auditing of development co-operation is carried out by the Unit for Internal Audit and Evaluation of the Ministry for Foreign Affairs or an outside auditing community.

The purpose of development co-operation auditing is to ensure that the created system sufficiently ensures that the goals and objectives of development co-operation will be efficiently and economically achieved with the available resources. It is primarily carried out by assessing the standard of internal control in development co-operation projects and the adequacy of risk management. The assessment of internal control and risk management includes the evaluation of the structure of operating processes, goal-setting, risk recognition, risk assessment, risk management, control measures, information flow and monitoring of projects. In addition, internal auditing also evaluates projects from the perspective of the priorities specified in the development policy of the Ministry for Foreign Affairs.

7.3 PREVENTING AND REPORTING MISUSE

Relating to internal control, actors in development co-operation projects are also responsible for preventing corruption. In addition to internal control, the prevention of corruption must be a built-in element of the project, so that controllers do not even think that they are performing specific control tasks. Preventing corruption must be continuous and proactive in nature. The following are some of the practical means of internal control for combating corruption:

The possibility of corruption is taken seriously.

- › Risks are assessed, dealt with and monitored on a continuous basis as part of daily activities.
- › The principles of good governance and management are followed in all activities.
- › The personnel are trained to recognise signs of corruption.
- › When choosing co-operation partners, attention is paid to experience of earlier co-operation with the partner, appropriateness and reliability of the partner's administration and the partner's willingness to act honestly and transparently.

According to the Ministry for Foreign Affairs' financial regulation (norm 12/2009), all detected or suspected flaws and cases of misuse in development co-operation projects must immediately be reported to the Administrative Director, Financial Director and the Unit for Internal Auditing of the Ministry for Foreign Affairs.

The severity and importance of reported suspicions are evaluated in cooperation with the Unit for Internal Auditing. Based on the evaluation it is decided whether a special audit of the project is necessary. If misuse is detected during the investigations, concerning the actions of the Ministry or Embassy or the funds or assets that the Ministry or Embassy administers or is responsible for, this shall be reported in accordance with the Rules of Procedure of foreign affairs administration. If criminal activity is detected in the actions of the Ministry or Embassy, or criminal activity has been directed at funds that the Ministry or Embassy administers or is responsible for, the relevant Department for Development Policy, Service Unit or Embassy responsible for reporting abuse directed at development co-operation funds shall report the offence in accordance with Section 17 of the aforementioned Act.

Detected or suspected cases of abuse for each year are included in the Annual Report of the Ministry for Foreign Affairs, in accordance with the State Budget Act.



PART IV

THEMATIC APPROACH TO ANTI-CORRUPTION

Certain areas of development cooperation are more prone to corruption than others due to many situational factors, such as humanitarian assistance. In addition, there are thematic issue areas like gender equality and the rule of law, which are essential parts of successful anti-corruption work. The following chapters will address how governance strengthening and corruption prevention are taken into consideration in the following thematic areas: humanitarian assistance, aid for trade, gender equality and the rule of law.

1 HUMANITARIAN ASSISTANCE

1.1 ROLE OF CORRUPTION IN HUMANITARIAN ASSISTANCE

Saving lives in a crisis situation is the fundamental objective of humanitarian assistance. The question of how to minimise diversion and corruption whilst responding to acute needs, is one of the most challenging dilemmas facing humanitarian practitioners. In the worst case, aid can fuel conflicts through diversion or misappropriation. Therefore, ensuring that lifesaving resources end up in the hands of the targeted population and are not diverted or abused is a crucial part of the humanitarian planning process.

Humanitarian assistance differs from development cooperation in terms of its objectives, principles, mode of implementation and duration. In general, it is channelled through the UN system and NGOs. The objectives of humanitarian action are to save lives, alleviate suffering and maintain human dignity during and in the aftermath of man-made crises and natural disasters. Humanitarian action is guided by the humanitarian principles, namely humanity, impartiality, neutrality and independence. It covers the provision of material aid, such as the distribution of food, water and sanitation, shelter, health services and other relief items, as well as the protection of civilians and those no longer taking part in hostilities. According to the Principles and Good Practice of Humanitarian Donorship (GHD), humanitarian funding should be based on the assessed needs and be independent from political, economic, military or other objectives.

Humanitarian organisations often work within highly insecure and exploitative environments, where risk of corruption is high. They are

under extreme demands to deliver aid rapidly, due to scale and immediacy of need. In addition, crises and disasters are at the centre of media and public attention, increasing the pressure. Assistance is often injected into resource-poor settings where there is no respect for the rule of law and where powerful people can have disproportionate control over resources. As a result, the prevention of corruption, from small bribes to large-scale procurement fraud, remains a daily struggle for operational agencies. In complex emergencies the risks of aid diversion remain particularly high.

Corruption in humanitarian assistance can take many forms. Programme activities such as needs assessment, targeting and registration, distribution and even monitoring and evaluation can all be misused and distorted for personal or political gains. Goods and services may be diverted to non-target groups at field level. High-value food and non-food items, such as medicines or processes such as registration for resettlement, present a special temptation. The extortion of sexual favours in return for access to relief resources can affect the targeting, registration and distribution of aid. In logistics, corruption can take place in the form of payments of unofficial fees to move commodities through ports, borders and checkpoints. Risks of corruption are further increased due to the lack of access and security, and consequently, due to limited access to carry out independent monitoring.

1.2. PREVENTING CORRUPTION IN HUMANITARIAN ASSISTANCE

So far, there has been a limited amount of shared analysis concerning the impact of corruption on humanitarian assistance. It is therefore important to continue building a more open culture to better communicate the risks of corruption in challenging humanitarian environments. Attention should also be paid to understanding the negative impacts of possible diversion of aid compared to the impacts of reducing or suspending food aid, as well as how diversion can realistically be minimised.

It is crucial that agencies have in place robust and reliable anti-corruption systems and tools. The first step in the prevention of corruption is better

identification and assessment of risks and opportunities for corruption. Agencies need to include risk assessments for fraud and mapping of corruption risks into their contingency and emergency preparedness planning. The importance of related staff training in risk assessments and anti-corruption measures deserves to be highlighted.

While corruption is often seen primarily in terms of financial systems and fraud, risk of corruption runs throughout the organisation. Therefore, a strategic, holistic approach to addressing corruption is required. Practices to tackle corruption also go hand-in-hand with promoting programme quality, particularly improved monitoring. Aid agencies can often reduce diversion risks by closely monitoring their assistance. Attention should also be paid to beneficiary exclusion related to gender, disability or age, as women or vulnerable people are often more likely to have their entitlements abused. Communities should be kept well-informed of their rights, entitlements and whistle-blowing/complaint mechanisms, in order for them to speak out if the resources are diverted through corruption.

When shifting from humanitarian assistance mode towards rehabilitation, reconstruction and development cooperation, one of the main challenges in the post-conflict transition context is that national governments often do not have the necessary capacity and proper institutions to effectively manage increasing international support. In transition, donors often need to provide growing levels of flexible development assistance in a fast manner to implement essential peace building and state building activities. Consequently, it is crucial to continue paying attention to prevention of corruption and to ensure that the analysis of the corruption risk is an essential part of post-conflict/disaster need assessment.

KEY ISSUES TO BE CONSIDERED

- › Ensure that the Memorandum of Understanding and operational contracts with the agency include a clear clause on the elimination of corruption.
- › Ensure that the agency has in place a robust and reliable anti-corruption system.
- › In the Executive Boards, encourage active and open dialogue on the corruption risks and prevention strategies, and ensure that agencies are proactive in communicating risks especially related to operations in high risk environments.

THE WORLD FOOD PROGRAMME AS A LEARNING ORGANISATION: WFP's Risk Management Practices after the Somalia case.

Somalia is one of the world's most pressing humanitarian emergencies. The 20-year armed conflict has escalated over the past decade and caused enormous suffering and a loss of lives. Despite the difficult environment and lack of access, humanitarian organisations have continued working in Somalia. Due to the poor security situation many agencies supporting Somalia operate out of Nairobi/Kenya, via remote control.

The United Nations World Food Programme (WFP) has been operating in Somalia since the 1960s. In June 2009 several allegations were made against WFP Somalia operations on Channel 4 News. These included accusations of fraud in food distribution amongst other things. In March 2010, the United Nations Monitoring Group on Somalia made additional allegations. As a consequence, the WFP's Executive Board in June 2010 requested an external auditor to undertake a detailed review of WFP Somalia operations. After a series of investigations, no proof was found of serious malpractice on behalf

CASE





of the WFP staff. In addition, the problems raised mainly related to south Somalia where WFP has not been operational since December 2009, mostly due to the security threats.

While risk management as such is nothing new to WFP as the largest global humanitarian actor, after the Somalia case, however, it has gained more explicit attention at every organisational level after the Somalia case. WFP has set up a separate Risk Management Committee within the Secretariat, consisting of the Executive Director, the Deputy Executive Directors and senior managers to supervise the risk management process in WFP. In addition, the newly created Executive Management Council also reviews the effectiveness of risk and performance management arrangements. WFP has developed an actual Corporate Risk Register that provides an overview of WFP's key risks, weighs how serious they are, and identifies the responsible parties to carry out actions. Risk management guidelines and tools have been elaborated, risk management focal points designated in country offices and a range of control and supervision mechanisms implemented.

The World Food Programme has also established a clearer link between risk management and performance-based management. This is enshrined in the fact that WFP has started to develop a unified information system encompassing the entire organisation (the Secretariat, regional and country offices) which allows for integrated planning, performance and risk management, budgeting and reporting. ■

2 AID FOR TRADE AND PRIVATE SECTOR DEVELOPMENT

“Corruption acts as a hidden overhead charge that drives up prices and erodes quality without any benefit to producers or consumers. Preventing corruption makes good business sense.”

Ban Ki-moon, the UN Secretary-General on International Anti-Corruption Day 9 December 2010.

2.1 ROLE OF CORRUPTION IN AID FOR TRADE AND PRIVATE SECTOR DEVELOPMENT

Corruption in the context of aid for trade (AFT) and private sector development (PSD) hinders the development of a normal market economy. Fraudulent and outright criminal practices put an extra price tag for companies’ trade and investments and distort normal market processes such as competition. National authorities lose tax income and employees risk falling outside social security benefits in cases of sickness, unemployment and retirement. According to the United Nations Global Compact (UNGC), corruption adds worldwide as much as 25% to the cost of public procurement.

In the AFT and PSD context, the most common forms of corruption are: bid-rigging, collusion by bidders, fraud in bids, fraudulent agreement performance, fraud in audit, substitution of products, falsification of

costs and budgets and outright bribery. Notwithstanding, AFT and PSD projects and programmes involve a relatively strong role for companies and other private sector actors to be engaged in cooperation and partnerships, which makes AFT and PSD somewhat different from the rest of the development cooperation.

2.2 PREVENTING CORRUPTION IN AID FOR TRADE AND PRIVATE SECTOR DEVELOPMENT

Global experience shows that systematic risk management, for example in the form of anti-corruption policies, can prevent much of the corruption to which companies are exposed. An example of collective action against corruption at system/policy level is: the United Nations Global Compact (UNGC) initiative, which advances the commitment of companies in anti-corrupt business practices as part of overall corporate social responsibility.

Another example is the World Bank Institute's action with private sector and civil society stakeholders, including the UNGC and Transparency International, and its resource centre for business. Where such system-wide and policy-level anti-corruption work has not yet eliminated the most of corruption, companies must act either collectively or individually to manage corruption risks. Nowadays all multinational companies have their own codes of conduct against corruption. The situation is, nevertheless, different for small and medium-sized enterprises as they are in the most vulnerable position.

KEY ISSUES TO BE CONSIDERED

Openness in information sharing

In bidding/procurement processes, publicity and information sharing can be powerful tools to avoid corruption. Information should be shared within the Ministry/Embassy as openly as possible but also respecting the companies' business secrets. When a company's representatives are aware of the openness in information sharing within the Finnish administration, they may be discouraged from resorting to inappropriate practices in the first place.

- › **AUTHORISE SEVERAL PEOPLE TO KNOW** about company issues and engage them in the process in order that possible information on malpractices will be shared with relevant people in the Ministry and Embassy.
- › **DOCUMENT ALL MEETINGS** with company representatives and inform the company representatives that the meetings will be documented. For example use cc in email communications.
- › **INFORM COMPANIES THAT ANY INAPPROPRIATE BEHAVIOUR WILL BE CAREFULLY SCRUTINISED** and that it will likely bar the misbehaving companies from partnering with the Ministry/Embassy in the future.
- › **TAKING THE SIZE OF THE PROCUREMENT INTO ACCOUNT**, consider engaging an external monitoring agent for large tendering processes. Such an agent can create level playing field among bidding companies by monitoring the process as an independent outsider.
- › **ASK FOR A WRITTEN AND SIGNED STATEMENT** from the company. Ensure that it can be used as a public document.
- › **INFORMATION ON SANCTIONS** for companies in case of bid-rigging or corruption must be clear. Exclude a rigging company from the current tender and also from any future tenders.

Corporate Social Responsibility (CSR)

Information on companies' businesses, track records, CSR issues and audits can offer valuable insights into their commitment to good business practices. If a company has produced a CSR report (e.g. a Global Compact Communication on Progress), it indicates that it takes corruption and other wrong-doings seriously. Such reports should be studied carefully and encourage other companies to produce their own reports. In addition, the companies' income statements, balance sheets and audits may also be useful information. Companies' capacity needs also to be strengthened on anti-corruption issues.

- › Study companies' income statements, balance sheets and audits;
- › Study, when available, companies' CSR reports;
- › Encourage companies to adopt and implement internal anti-corruption policies and procedures;
- › Encourage companies to produce a CSR report;
- › Study also companies' websites. Assess the level of professionalism relating to their websites;
- › Exploit peer pressure but also peer example;
- › Consider the provision of training to companies and other private sector actors on corruption-business-development aid themes.

Information on Finland's zero tolerance on corruption and requirement to observe the basic principles of Corporate Social Responsibility (CSR) should be readily available for companies, business associations and other possible partners.

BUILDING PARTNERSHIPS

It is advisable to have trustworthy partners in the private sector in developing countries. Embassies may have cooperated for years with local Chambers of Commerce, business associations, industrial organisations or companies that they have learned to know to be reliable.

The Local Networks of the United Nations Global Compact initiative are also good partners at the grassroots business level in developing countries. Such partners may be in a valuable “insider” position to notice possible wrong-doing temptations in a very early stage and communicate their information to the Ministry/Embassy representatives.

- › Establish good working relations with the local business associations/organisations as well as watchdog-type collective actors for reliable information/whistleblowing purposes;
- › These organisations’ capacity can be built with the help of Fund for Local Cooperation;
- › Exploit peer pressure but also peer example;
- › Engage actively in open discussions on corruption at the country level;
- › Encourage potential partner companies, which are not yet known to the Ministry/Embassy personnel and which have intentions to participate in tenders, apply for development cooperation funding or engage in some other forms of cooperation, to join local business associations or Global Compact Local Networks or introduce themselves to local Chambers of Commerce.

UNITED NATIONS GLOBAL COMPACT**– The largest voluntary corporate responsibility initiative in the world.**

The UN Global Compact (UNGC) is a strategic policy initiative for the business world, officially launched in 2000. Recognising business as a primary driver of globalisation, UNGC encourages business to foster economic growth in sustainable and inclusive ways that benefits societies and economies everywhere.

The initiative is targeted at businesses that are committed to aligning their operations and strategies with ten universally accepted principles in the areas of human rights, labour, environment and anti-corruption, which are derived from: the Universal Declaration of Human Rights, the International Labour Organization's Declaration on Fundamental Principles and Rights at Work, the Rio Declaration on Environment and Development and the United Nations Convention Against Corruption. Its two complementary aims are: firstly, to mainstream the ten principles in business activities around the world and secondly, to catalyse actions in support of broader UN goals, including the Millennium Development Goals (MDGs).

For participants, UNGC offers a variety of tools and resources, all designed to help advance sustainable business models and markets. UNGC works as a practical framework for the development, implementation, and disclosure of sustainability policies and practices. UNGC is based on voluntarism, requiring participants to provide an annual Communication on Progress (COP). The COP is an important demonstration of a participant's commitment to the UNGC and its principles. Participating companies are required to follow this policy, as a commitment to transparency and disclosure is critical to the success of the initiative. ■

3 GENDER EQUALITY

3.1 THE ROLE OF CORRUPTION IN GENDER EQUALITY

Good governance is difficult, if not impossible to achieve when gender discrimination and other corrupted practices prevail. The same holds true the other way around: actions to promote gender equality also facilitate the advancement of anti-corruption and good governance.

Reviewing corruption with a gender lens is useful because empirical studies show that less corrupt, less likely than men to pay bribes or condone bribe taking, women are also disproportionately affected by corruption. At the same time, less corruption helps to increase gender equality, and understanding the role of men and women in corruption helps to define an effective anti-corruption strategy with a gender equality dimension.

In a Finnish government funded activity, promotion of gender equality is not a matter of choice - each government or municipal employee has the responsibility to promote gender equality in his or her work according to the Finnish law as specified in the Constitution and the Equality Act (2005). Ensuring a gender sensitive approach and the promotion of women's and girls' rights in development cooperation activities, is the responsibility of a Finnish government official, as the representative of Finland before a partner country. Mainstreaming cross-cutting objectives, including gender equality, in all development cooperation activities is a binding principle in the Finnish development policy. Deviation from this principle must be separately justified.

3.1.1 Corruption maintains female-dominated poverty

People experience and perceive corruption differently. In countries with corrupted practices, many of those who occupy positions of power are privileged because they represent certain constituencies - ethnic, religious, historical, familial. Sex is also often an important factor: social expectations set different roles for men and women.

Those who suffer most from the effects of corruption in their everyday life are low-income earners, the majority of whom are women. One of the root causes for petty corruption is the draining of public resources from basic social services and infrastructure, which has serious effects on the people who are dependent on basic services: health, nursing services and access to water, for example. Corruption and non-delivery of services in the health sector translates into an increase in the care burden, which falls predominantly on women. With high incidence of bribes demanded by public institutions, such as the police or judiciary, people living in poverty and people with very limited control of resources, most of them women, have neither the money nor the time to pursue justice.

Women also experience extortion more frequently than men. Women may be asked for sexual favours as a bribe, payment or as a prerequisite for having access to an ordinary public service. This kind of extortion is always a serious case of bad governance. The cases revealed in disaster circumstances, aid work or peace keeping operations have raised wide negative attention and disciplinary consequences. Corruption and the threat of extortion manifestly affect equal access to resources, decision making and justice.

3.1.2 The myth of the inherently (un)corrupted gender

The presence of women in politics and in positions of authority does not in itself lead to less corruption. Yet corruption levels are often found to be lower in countries where there are more women in government. Only transparent and democratic institutions can be accountable and predictors of low corruption, which also promotes gender equality. As stated in UNIFEM's publication Progress of the World's Women 2008-2009, "more women in politics is not the cause of low corruption, but rather, democratic and transparent politics is correlated with low corruption, and

the two create an enabling environment for more women to participate in politics.” In other words, anti-corruption work also supports a human rights-oriented approach for equal participation, and corrects sometimes erroneously set unrealistic and unjust preconditions and expectations on women’s participation. However, there is an emerging consensus that gender shapes opportunities to engage in corruption. In countries where the state functions through all-male networks and forums from which women are socially excluded, women have fewer opportunities to engage in corrupt activities or work to abolish them. Nevertheless, it should be noted that in male-dominated networks not all men engage in corruption.

3.2 PREVENTING CORRUPTION IN GENDER EQUALITY – GENDER ANALYSIS SUPPORTS ANTI-CORRUPTION ACTIVITIES

Public resource allocation has an especially significant effect on low-income women and men as well as on other disadvantaged groups. For this reason, it is essential that also they can participate in planning, implementing and monitoring of development cooperation activities. Only participation and ownership can meaningfully increase the possibility of addressing the core issues which meet the needs of all stakeholders. Participation and ownership also facilitate the ultimate goal of the beneficiaries also becoming monitors of public spending. Therefore, the representation must encompass all social strata. Only by bringing together men and women from all stakeholder groups, be it the government, civil society or at local level, can the benefits that meet priority needs of all. This also ensures that the aims, objectives and methodologies are fair, just and transparent and that the benefit and the burden will be also shared or compensated in an even-handed manner.

The project or programme needs to have mechanisms to ascertain this goal. It needs mechanisms to keep the stakeholders fully involved at regular intervals in the decision-making process, and fully informed of the implementation and results. This implies that those directly involved are accountable to those whom they represent on the fulfilment of their obligations, and that they inform and consult their constituencies at regular intervals.

KEY ISSUES TO BE CONSIDERED

The Finnish Development Policy specifies that gender equality and other crosscutting objectives need to be taken into account by integrating them into all development policy and development cooperation:

- › by mainstreaming; integrating them at all levels into policy, goals and projects, and planning, implementation, monitoring and evaluation of activities;
- › by designing and implementing separate targeted actions within projects or programmes or separate projects, if mainstreaming alone does not bring about sufficient impact to changing persisting structures of inequality;
- › by including them in policy dialogue, country consultations, multilateral and EU cooperation, and communications.

Knowledge about the local culture and social roles and norms is essential. Crosscutting objectives have to be clearly incorporated into project cycle planning and implementation. Some key issues to be considered are:

- › **CONDUCT A BASELINE ASSESSMENT:** Analyse the situation related to the status and rights of different groups before the activity starts.
 - Economic aspect: (if, and) how is the labour market divided, for example?
 - Political: how decisions are made, who executes power in formal institutions, are people included in the decision making processes, for example?
 - Social: do role expectations limit participation in meetings, for example?
- › **CARRY OUT AN IMPACT ASSESSMENT:** Analyse the impacts of the activity on gender equality and on women and men and identify the measures to ensure equal participation.

- What are the mechanisms of participation?
 - Which participation mechanisms does the project favour?
 - How does the project impact on the participation mechanisms?
- › **IDENTIFY THE ECONOMIC RESOURCES:** Calculate the allocated budget for the promotion of gender equality and compare it to the set goal and activities.
- What is the budget for staffing tables?
 - How much money is earmarked for activities?
 - What other activities promote inclusion of non-hegemonic groups?
- › **PERFORM AN INDICATOR MAPPING:** Name the existing monitoring systems for verifying the promotion of gender equality.
- Indicators that can be compared with already existing figures at the end.
 - Indicators that need to be measured in the beginning of the project.
 - Indicators that can and should be collected regularly.

Data collection supports transparency and impact analysis before, during and after the project. It also helps to compare the results to the hypothetical ones set in the planning stage.

4 RULE OF LAW AND HUMAN RIGHTS

4.1 ROLE OF CORRUPTION IN THE RULE OF LAW AND HUMAN RIGHTS

The rule of law and corruption are two closely linked but opposing concepts: where the rule of law is the end state aimed for, corruption is the factor that hinders the proper functioning of the rule of law. Corruption means that those who are able to pay can escape the “supremacy of law”, thus undermining public confidence in the rule of law. Whereas the rule of law represents formal rules and formal functioning of the state, corruption works on a basis of informal rules and practices that count on “particular trust” of certain individuals. Public trust in formal functioning of the state increases when informal rules and practices of corruption perish.

The concept of the rule of law is understood to include principles of legality, separation of powers, respect for human rights and full participation, legitimacy and trust. In the Finnish Constitution it is clearly stated that exercise of public powers is established on a law and that the law shall be strictly observed in all public activity. The Constitution also stipulates that everyone is equal before the law and that the public authorities have the responsibility to guarantee the observance of basic rights and liberties and human rights.

“The United Nations has defined that “the rule of law refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are con-

sistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.” (S/2004/616)

Central good governance principles e.g. participation, transparency and access to information, and accountability are inherently linked to the rule of law and human rights. For instance, effective participation depends on implementation of several human rights: freedom of association, freedom of expression and the right of access to information. Transparency and access to information enable individuals to exercise their political and civil rights and economic, social and cultural rights. In concrete terms this means that people need to have complete, up-to-date and comprehensible information in order to fully enjoy their rights in practice (for example voting, access to housing, health, water). Accountability links to the human rights agenda in the sense that on the basis of human rights obligations, States have to protect individuals and provide recourse and justice if their rights are violated. Again, in concrete terms this means that States should ensure that relevant institutional arrangements are in place and that people without any discrimination have access to these accountability mechanisms (e.g. courts, Ombudsmen, other mechanisms for complaint).

Development policy and cooperation are often implemented in difficult environments where States are struggling with lacking legitimacy. Rampant corruption, lacking accountability and trust impede development and undermine human rights and freedoms.

The values inherent in the rule of law principle help to address and prevent corruption. At an operational level this means “mainstreaming” of the rule of law as a governance principle into dialogue and activities regarding various sectors. On the other hand, corruption has to be recognised and tackled also when it occurs within the rule of law sector itself (i.e. the judiciary, the police or the prison system). An anti-corruption perspective has to be effectively included in rule of law support activities and dialogue.

4.2 PREVENTING CORRUPTION AND STRENGTHENING OF THE RULE OF LAW AND HUMAN RIGHTS

There is an obvious link between the concepts of the rule of law and corruption: the efforts to support the rule of law and to reduce corruption are mutually reinforcing. Preventing impunity and strengthening the rule of law helps fight corruption.

Different modes of corruption - bribery, extortion, nepotism, misappropriation of funds or illicit influence - severely undermine trust in the rule of law as a principle of governance and the functioning of the “rule of law institutions” in particular. In short, the key institutions in the rule of law sector are the judiciary, the police and the prison system. These are among the core institutions in any state and thus corruption not only endangers the trust in these institutions but in the very functioning of the state in general. Political or other forms of interference in the judiciary questions the separation of powers and undermines the independence of the judiciary. This phenomenon has serious consequences on legitimacy.

Groups that are discriminated in a society are more often also targeted by corruption, e.g. women, minorities, indigenous peoples and persons with disabilities. Corrupted justice and law-enforcement institutions have the greatest impact on the poor who, in the absence of resources to improve their situation by other means, have to depend on the fair functioning of justice. Anti-corruption efforts in the rule of law sector are crucial for poverty eradication and improving access to rights for the poor.

As regards rule of law institutions, anti-corruption measures include, among other things, an open and transparent system for appointments according to merits and competence, adequate and secured remuneration, adequate resources to the functioning rule of law institutions, independent complaint mechanisms, and awareness-raising campaigns to address corruption in the rule of law sector. Additionally, support for civil society to monitor and campaign against corruption is needed. Independent media is another important watchdog bringing corruption cases to the public knowledge.

Anti-corruption agencies have an important role in addressing and tackling corruption, most commonly by enforcing criminal law on corruption cases. They may also have a range of other non-legal functions, including raising public awareness on corruption. While the existence of an anti-corruption agency is usually a positive sign of commitment, it is however useful to analyse the legal framework regarding corruption, the mandate of the agency, allocated resources and results achieved so far in order to have a more complete understanding of the situation.

The rule of law is regarded to be essential for economic development, implementation of human rights and prevention of conflicts. It is a central element of state-building in post-conflict situations and in fragile states.

As regards economic development, the rule of law ensures legal certainty, predictability, and helps to invite investments. The UN resolution on “Legal empowerment of the poor” states that access to justice and the realisation of rights related, inter alia, to property, labour and business are mutually reinforcing. Also, the rule of law at national and international levels is essential for sustained economic growth, sustainable development and the eradication of poverty and hunger.

Human rights for their part are fully integrated components of the rule of law principle. In the Finnish rule of law tradition economic, social and cultural rights are emphasised as well as political and civil rights. Among Human Rights Defenders (HRD) there are persons and organisations that fight corruption. In many places HRDs work in challenging and dangerous environments, in extreme cases also risking their personal safety and life, as they monitor, publicise information and campaign against corruption.

The link between the rule of law and conflict prevention is central. The rule of law provides legal and peaceful means to resolve disputes instead of waging war. Support for the development of the rule of law and building trust in the state institutions in fragile States helps to consolidate peace. Fragile and weak institutions, unable to ensure security, justice and jobs, often lead the country back to crisis and to violent conflict undermining development efforts. States having weak or lacking rule of

law institutions along with high levels of corruption have higher risk of extreme violence. The development of rule of law in post-conflict or fragile situations requires complex and long-term efforts as the sector to be reformed is broad and often thoroughly corrupted and manipulated by different power structures.

Fighting impunity in particular related to most serious violations of human rights and humanitarian law, war crimes, and crimes against humanity is one of Finland's central priorities. Finland supports the work of the International Criminal Court and other international criminal tribunals.

Transitional justice is a multidisciplinary field of efforts to address systematic and wide-spread human rights violations and to fight impunity. The initiatives include criminal prosecutions, truth and reconciliation commissions, reparation programmes for victims and communities, vetting of security and justice organisations, and setting up memorials to remind about war victims and past abuses. An anti-corruption perspective plays an important role in many of these efforts, particularly in the successful functioning of criminal prosecutions, reparation programmes and vetting of relevant organisations.

KEY ISSUES TO BE CONSIDERED

Corruption hinders the realisation of human rights and the rule of law. Some key issues to consider in the processes of the development policy and cooperation include the following:

- › **ENSURE THAT THE OPERATIONAL ACTIVITIES ENTAIL REAL PARTICIPATION OF THE POPULATION.** Participation is only effective if people have the right of access to information as well as the right and opportunity to express their opinion. Find out what kind of accountability mechanisms there are in the country and what are the mechanisms allowing people to make complaints and seek remedy (courts, ombudsmen etc). At programme level, consider ways to support strengthening of the local capacity in this respect throughout the project cycle.
- › **THE GOVERNANCE SYSTEM IN A GIVEN COUNTRY MAY BE SO RESTRICTIVE THAT INDIVIDUALS DO NOT HAVE ACCESS TO INFORMATION IN GENERAL.** At programme level, in these cases, it is even more important to build mechanisms allowing the opportunity to seek and receive information about the aim, scheduling, and funding of the programme. This makes corruption more unlikely as beneficiary communities follow up and monitor closely.
- › **AS CORRUPTION IS OFTEN LINKED WITH DISCRIMINATION BASED ON RACE, COLOUR, SEX, LANGUAGE, RELIGION, POLITICAL OPINION, NATIONAL OR SOCIAL ORIGIN OR SEXUAL ORIENTATION,** one should take care that all groups are allowed to participate in consultations without discrimination. Hence, pay a special attention to ensuring participation of easily vulnerable groups such as women, children, minorities, and indigenous peoples, persons with disabilities and elderly persons.
- › **ENSURE THAT YOU KNOW AND UNDERSTAND THE CORE HUMAN RIGHTS TREATIES.** One should always build political dialogue and operational activities on a solid base regarding human rights.

- › **ENSURE THAT YOU UNDERSTAND THE LEGAL FRAMEWORK IN THE COUNTRY** and the actual functioning of justice and law-enforcement institutions (in particular the judiciary, the police and the prison system). Pay a particular attention to the legal framework related to the prevention of corruption and analyse how these laws are implemented in practice. Familiarise yourself with the mandate of a potential anti-corruption commission and its role in the society.
- › **ENSURE THAT YOU HAVE A GOOD UNDERSTANDING ON THE HUMAN RIGHTS SITUATION IN THE COUNTRY** and the situation of the Human Rights Defenders. Follow actively cases the Human Rights Defenders take up, and raise them within political dialogue and address them, when possible, with development cooperation initiatives.
- › **IN FRAGILE AND CONFLICT AFFECTED COUNTRIES PAY ATTENTION** to the questions regarding the establishing and strengthening of legitimate institutions, fighting corruption and enhancing service delivery and job creation.



Whistleblower protection – Anti-corruption for human rights

Corruption violates basic human rights and liberties, and maintains discrimination and injustice. People who prevent or highlight corruption for public good are called whistleblowers. The EU considers people “fighting against corruption” to be a category of human right defenders.

When exposing corruption, whistleblowers can be afraid of or face retaliation, such as coercion and even violence. There is a need for whistleblowers to be protected. Although the primary responsibility for the promotion and protection of human rights lies with States, the EU recognises that individuals, groups and organs of society all play important parts in furthering the cause of human rights.

Protection of whistleblowers strengthens accountability, transparency and reduces corruption in the public and private sector, fostering development and achieving of human rights.

WHEN “SILENCE IS THE VIRTUE OF FOOLS” [SIR FRANCIS BACON]

Whistleblowing generally refers to public interest disclosure by employees about wrongful acts, illegal or unethical conducts within their organisations. Whistleblowers always face two dilemmas: a conflict between personal and organisational values, and a conflict between obligations owed to an organisation and to parties beyond it.

Employees are more likely to detect corruption and other malpractice in the course of their work easier than people outside. Yet, employees have the least incentives to report malpractice. Whistleblowing may cause considerable harm for employees’ careers, personal and professional lives, and therefore they are afraid to speak up out of fear of retaliation.

There are cultural, organisational and legal barriers that discourage whistleblowing. In some countries, whistleblowers face cultural barriers and are negatively identified as “informants”. The main difference between informants and whistleblowers is that informants are often involved in some sort of unethical affairs, and use disclosure for clarifying their own role, or reduce their liability.





Equally important is the culture inside organisations. Whistleblowers can face social sanctions for their disclosures and are afraid of retaliation. There are also legal restrictions: nearly every company has strict rules for employees concerning the duty of loyalty and confidentiality (business secrets, trade secrets). The lack of an appropriate legal system for whistleblower protection, or the lack of awareness about it, also discourages whistle-blowing as well.

“IN GOOD FAITH”

Countries have variety in laws regarding disclosures. Most laws and international treaties require the whistleblower to report malpractice in “good faith” and do not require whistleblowers to prove allegations are true. Concerning channels of disclosure, laws differ as well. The primary channel for disclosure is to make an internal disclosure. Sometimes there are hotlines for this. External reporting is an alternative to internal reporting mechanisms, for example when a whistleblower believes internal disclosure would have resulted in retribution. The final form of reporting is to make a disclosure to the media. Most legislations deal with media disclosures as a last resort option. Another topic is the difference between confidentiality and anonymity regarding disclosures. Most legislations exclude anonymous disclosures while providing protection for the identity of the whistleblower. ■

Appendix 1

Information Sources and Links to Further Information

Ministry for Foreign Affairs of Finland

U4 - Anti-Corruption Resource Centre

Transparency International



The United Nations Development Programme (UNDP) / Democratic Governance

UNDP / Oslo Governance Centre

United Nations Project Office on Governance

Office of the United Nations High Commissioner for Human Rights / International Law

United Nations Office on Drugs and Crime (UNODC)

UNDP / Governance Assessment Portal (GAP)

United Nations Global Compact (UNGC)

United Nations Convention against Corruption (UNCAC)

United Nations Convention Against Corruption: A primer for development practitioners, 2007

UNODC, Corruption: Compendium for International Legal Instrument on Corruption, 2005



World Bank

World Bank Institute

World Bank / Governance / Public Sector & Governance

World Bank Institute / Governance Matters

Extractive Industries Transparency Initiative (EITI)



Organisation for Economic Co-operation and Development (OECD)

OECD / Development Assistance Committee - OECD/DAC



Paris Declaration, 2005

Accra High Level Forum on Aid Effectiveness, 2008

Busan High Level Forum on Aid Effectiveness, 2011

PUBLICATIONS AND TOOLKITS

Preventing Corruption. A handbook of Anti-Corruption Techniques for Use in International Development Co-operation. Ministry for Foreign Affairs of Finland, 2003.

Corruption, Poverty and Gender. With case studies of Nicaragua and Tanzania. Ministry for Foreign Affairs of Finland, 2008.

Combating Corruption. The Finnish Experience. Ministry for Foreign Affairs of Finland, 2005.

Corruption and the Prevention of Corruption in Finland. Ministry of Justice, Finland, 2009.



A Users Guide to Measuring Corruption by UNDP

Democratic Governance Reader. A reference for UNDP practitioners



World Bank: Dealing with Governance and Corruption Risks in Project Lending. Emerging Good Practices.

Addressing Sector Governance and Corruption Risk in Infrastructure Projects. African Development Bank, 2009.



OECD/DAC Draft Principles for Donor Action in Anti-Corruption, 2006.

OECD, Fighting Corruption for Development.



Conclusions by the Council of the European Union on the Governance in the European Consensus on Development: Towards harmonised approach within the European Union, 2006.

Handbook on Promoting Good Governance in EC Development and Co-operation. European Commission, 2004.

Analysing and Addressing Governance in Sector Operations. Europe Aid, 2008.

Handbook on Promoting Good Governance in EC Development and Co-operation



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