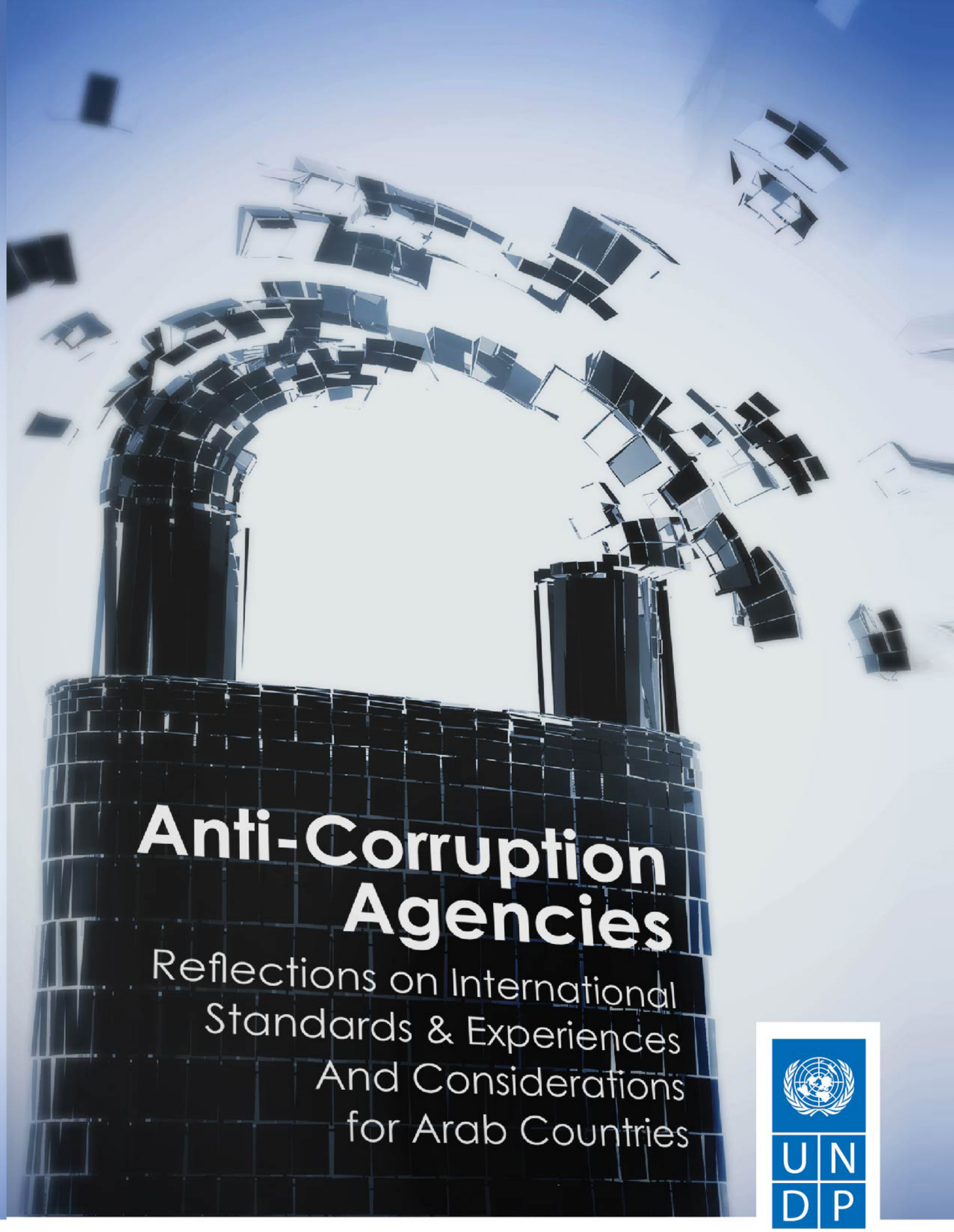

Anti-Corruption Agencies

Reflections on International Standards & Experiences And Considerations for Arab Countries

UNDP

ANTI-CORRUPTION AGENCIES

REFLECTIONS ON INTERNATIONAL STANDARDS AND EXPERIENCES

AND CONSIDERATIONS FOR ARAB COUNTRIES

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INTRODUCTION

Over the past three decades, Arab countries sought to respond to emerging developmental challenges in different ways. The focus on improving governance mechanisms did not begin to shape except recently, and has benefited from a number of major developments at the global and regional, including most recently the wave of transformations that have started in Tunisia in January 2011.

Attempts to confront corruption in the Arab countries have traditionally been very limited and can be considered to be one of the least developed components of governance reform efforts in the Arab region, with some rare exceptions. Indeed, corruption was treated as a taboo excluded from public policy debates and avoided in governance reform processes, as well as most of related bilateral and multilateral cooperation programmes.

This stagnating situation, at least as far as anti-corruption efforts are concerned, started to experience a gradual shift with the advent of the UN Convention against Corruption (UNCAC) in 2005 and the emergence of a more active regional community of reform drivers and specialised practitioners in ministries, judiciaries, parliaments and civil society. As a result, more space was created for dialogue and interaction within governmental circles, and in some cases, with non-governmental stakeholders. Some governments took lead and started integrating anti-corruption initiatives in their national policies and programmes, albeit in limited degrees, while others remained satisfied with a less explicit attention to the corruption problem. In 2011, this situation underwent another momentous shift. Popular disgruntlement with increasing economic insecurity and slow social and political development has led to unprecedented massive protests that swept across the region calling for profound changes in governance systems and citing corruption was one of their major grievances. Governments have come coming under increased pressure to act effectively and swiftly, but are faced with a number of challenges that may undermine the transformation into more representative and responsive governance institutions.

This study is developed with the support of the Regional Project on Anti-Corruption and Integrity in Arab Countries (ACIAC) at the United Nations Development Programme (UNDP) upon the request of the Arab Anti-Corruption and Integrity Network (ACINET). It aims to assist Arab countries in meeting the challenges of strengthening accountability, transparency and integrity through promoting a better understanding of the issues associated with establishing specialised anti-corruption bodies and enhancing the decision-making capacities of stakeholders responsible for developing anti-corruption institutional arrangements in their respective countries.

The term ‘specialised anti-corruption body’ is understood as referring to institutions that are established and dedicated to address corruption in a certain country or local region. The formation of such bodies dates back to more than sixty years ago.

They have been labelled as anti-corruption *agencies*, *commissions*, *committees*, and so on. In the Arab region, however, the most commonly used Arabic term is *hay'a* (هيئة). This study will use the term Anti-Corruption Agencies (ACAs) to refer to specialised anti-corruption bodies, noting that such bodies may indeed take different shapes and forms as the following discussion will show.

While there are obvious antecedent explanations for establishing an ACA, one of the recent dynamics influencing anti-corruption work in the region, and indeed other parts of the world, is the UNCAC, notably Articles 6 and 36. In a number of countries the ACA is not only tasked with specific functions, such as prevention or investigations, but also with coordinating the implementation of national anti-corruption strategies. For newly established bodies, such roles would have to be undertaken within existing resources, capacities, and legal and institutional structures, and would be influenced by the limitations imposed by a country's circumstances. The analysis of international experience warns of the potential consequences of establishing ACAs, and the UNCAC itself does not necessarily see a single and unique agency as the solution. Indeed, use of the UNCAC to provide the basis for justifying the work of existing ACAs, or the grounds for establishing a new ACA, may be misplaced and even not necessarily the best institutional vehicle to deliver an extensive mandate within difficult operating environments and with limited internal capacity. This does not mean, however, that ACAs may not be part of the solution in some countries, although lessons learned so far invite prudent reflection on a number of issues and a closer revision of national anti-corruption institutional arrangements, before deciding whether or not to set up an ACA. Indeed, the institutional development allowing most developed countries *not* to establish an ACA because of adequate funding, a willingness to coordinate and cooperate on anti-corruption activities, and a functional independence from political interference may not necessarily apply to the situation in many developing countries. Furthermore, it can be argued that in developing countries, a new agency with specific tasks is the missing institutional driver that will initiate and promote anti-corruption work that none of the existing agencies has taken on, or is willing to take on.

In this context, the *objective of the study* is to address a number of key questions that are relevant to decision-makers in the Arab region, with possible implications to comparable situations in other parts of the world. Those key questions include the following:

- Based on international experience, what are the advantages and disadvantages of an ACA?
- What are the expectations of UNCAC regarding the establishment of ACAs?
- What could be the institutional permutations, with or without an ACA, to address corruption?
- What support do ACAs require to facilitate their organisational development and

operational roles?
- What issues should countries without an ACA consider when making a policy decision as to whether or not an ACA would be established?
- What are the key profiles and lessons-learned from ACAs established in the Arab region so far? What are their challenges and future prospects?

1. ANTI-CORRUPTION AGENCIES: CONCEPTS, ISSUES AND LESSONS LEARNED

1.1. Overview

Corruption has long been a recognised aspect of state development and its persistence a threat to democratisation and development. Where, when and how it should be addressed has been the subject of academic and practitioner debate. Earlier hypotheses that corruption was an inevitable (and even tolerable) feature during certain periods of state development lost out to the prevailing (and continuing) orthodoxy that corruption is a public wrong, wastes limited resources and donor funds, disadvantages the poor, inhibits democratisation and highlights private benefit over the public interest. It thus must be addressed, and that evidence of success was also evidence of developmental progress.

Much of the debate on how to address corruption has been on the necessary legal, institutional and procedural mechanisms that have been predicated on the failings of existing institutions, particularly law enforcement authorities, which were seen by many donors and development partners as corrupt and inefficient. The preferred approach that has steadily gained universal acceptance has been the creation of a new and specific agency – the 'Anti-corruption Agency' – which would be established without the faults that existed in law enforcement authorities and with whom donors and development partners could be immediately engaged, and with which immediate results can be achieved.

The existing academic and practitioner literature on ACAs is repetitive in many aspects while the coverage of some key topics remains sparse. The issue of capacity assessments in regard to ACAs, for example, is still being developed while UNCAC is in its infancy in respect of implementation. This section is not intended to be exhaustive or detailed. Its purpose is to identify a number of issues relating to current knowledge and understanding of ACAs based on an in-depth review of related experiences over the past five decades.

Before moving onto the types and functions of ACAs and the issues associated with establishing and operating them, it is worth clarifying what an ACA is and providing a short historic background on their development. As de Souza notes, 'ACAs differ substantially in terms of competences and powers to carry out their mandate. Some

agencies do not have investigation and prosecution powers. Some have been provided with a strong preventive and educative capability. In principle, all ACAs were created with a special mission to combat corruption. In practice however, the "Anti-Corruption Agency" label expresses different institutional realities. The discrepancy of capabilities is so wide that we could not put in the same league, the French SCPC, which has not been provided with detection and prosecution competences and the Croatian USKOK or the Romanian NAD' (de Souza, 2006, p24).

1.1.1. What is an Anti-Corruption Agency?

The defining characteristic for this study, drawing on de Souza's report (2006) is the institutional status of ACAs – they are legal entities, permanent institutions in their own right, with full-time staff, and have executive responsibilities and not just advisory ones, related to at least one of three functions: 'prevention', 'awareness' and 'law enforcement'. Thus, this study is primarily focused on a stand-alone agency dedicated to addressing corruption, rather than a specialist unit within another agency, or an agency where addressing corruption is only part of a broader mandate.

Although ACAs may take different forms and shapes, they do have common features (see Box 1). Other forms of specialised anti-corruption bodies do exist, but are not ACAs *per se*. Those include special law enforcement units embedded in prosecution authorities (e.g. Romania, Spain, Sweden) or the police (e.g. Bahrain, Belgium, Norway), or independent bodies with very specific preventive mandates, mostly related to public ethics issues (e.g. Netherlands, Turkey, the United States of America), or national coordination structures that are not independent legal institutions nor fit most of the common features outlined in Box 1.

Box 1: Common features of Anti-Corruption Agencies

- Distinct from other government agencies, with a single issue of preventing and controlling corruption
- Permanent in nature, not meant to serve as a 'temporary fix', but as a long term institution
- Publically funded
- Accountable to at least one other government body - parliament, ministry of justice, the executive, etc.
- Contain both preventative and repressive dimensions of corruption control
- Centralize information on domestic corruption which is disseminated to other actors – media, international organizations, law enforcement, etc.
- Mainly recognized by, and accessible to, the general public
- Implied degree of autonomy and independence that these agencies maintain from standard law enforcement
- Fiscal independence, in that they have their own independent budget

Source: Based on Charron, 2008, p6

The particular institutional status of ACAs is key to understanding the many challenges that they face, stemming from their size/location in national institutional arrangements, their relations with the other institutions, and other intra-organisational issues, and whose consequences are often identifiable in poor operational performance (see Doig *et al*, 2005). Setting up ACAs involves *strategic* choices as to their core business – and thus the allocation of resources. These choices often lie at the heart of the inadequacies of the business planning processes in ACAs. An additional issue is that many of the current ACAs are multi-functional as a consequence of the pervasiveness of the Hong Kong model, which includes the three main functions together in one agency. Experience shows that replicate ACAs usually neither grasp the necessity of synergy between functions (a successful public awareness function may generate numbers, types and levels of complaints that are not acceptable in terms of the focus of investigation under the law enforcement function), nor manage the internal budget and resource procedures necessary to ensure organisational balance and focus.

1.1.2. An Historic Background

The emergence of ACAs as a worldwide phenomenon favoured by donors and development partners occurred with the establishment of the Directorate on Corruption and Economic Crime (DCEC) in Botswana in 1994. ACAs, however, were already in existence at the time, and could be traced back to the 1950s with the establishment of the Corrupt Practices Investigation Bureau (CPIB) in Singapore in 1952, followed by the Malaysian Anti-Corruption Commission (MACC) in Malaysia in 1967 and the Independent Commission Against Corruption (ICAC) in Hong Kong in 1974.

The Hong Kong ICAC was initially an important focus of study partly because it seemed to have a significant impact both on rising levels of corruption and on public attitudes toward the problem of corruption. It attracted widespread attention and comment (Scott, Carstairs and Roots 1988; Quah 1994) because, despite deriving from a colonial context, it seemingly offered a blueprint for anti-corruption efforts with a potentially global application.

Based on its structure and staffing (including the use of expatriates in senior positions), and its three-pronged strategy (prevention, awareness, and law enforcement), the Hong Kong model convinced donors of its transferability and adaptability as an effective internationally accepted tool in the fight against corruption. The specific and possibly unique factors enabling success in Hong Kong seemed to carry less weight in the minds of some policy-makers than the possibilities of transferring its functional and structural characteristics[1]: 'the domestic context of the creation of an ACA is increasingly

1 Set up in 1974 and led by a senior Hong Kong civil servant and a very experienced Hong Kong policeman with a background in intelligence, the ICAC's initial workload for much of its initial 255 staff came from complaints about police corruption and involved investigations of corrupt officers. Such was the adverse reaction to their work that the Hong Kong administration provided an amnesty for all pre-1977 offences. Thereafter, the ICAC moved on to civil service and private sector corruption. As it grew it maintained an approximate 75%-25% balance between its investigative function and the other functions.

intertwined with the international level. World institutions have incessantly recommended the creation of ACAs as an important piece of the national institutional architecture and grand strategy against corruption. In Central and East European countries, ACAs have also been recommended as part of macro anticorruption programmes promoted in view of EU membership' (de Souza, 2010, pp6-7).

One of the consequences of this approach has been the absence of a substantive review of the development issues and performance of the earlier ACAs as the next generation of agencies have been established. Another has been the absence of the impact of those ACAs in less supportive and enabling environments. A further consequence has been the aggregation of additional functions, including ownership of or responsibility for Article 5, under the body proposed by Article 6 of the UNCAC. Here it has been argued that 'a rather narrow interpretation of article 6 has emerged in some countries and among some experts that is expressed in calling for the establishment of one specialized anti-corruption agency as an obligation to fulfill the obligations of article 6, or in interpreting article 6 as providing the basis for the creation of "specialised" corruption prevention bodies…' (Hussmann et al, 2009).

At the same time, increasingly sceptical viewpoints have emerged on ACAs, ranging from concerns over their organisational capacity to address corruption effectively, to their contribution to the over-reliance on the Hong Kong ICAC as a prescriptive model to achieve results, although some experts still promote its value (see de Speville, 2010). As de Sousa notes, there has been substantial financial support for ACAs 'without any assessment of results achieved' (De Sousa, 2006, p18). In 2003, a DAC report noted that 'it is important to be aware that there are few success stories or examples of actually reducing corruption in a sustained way. The only clear-cut successes have been in Hong Kong and Singapore, both city-states that had fairly authoritarian governments when they initiated their anti-corruption efforts. They are also special cases and it is debatable how much these examples apply to other countries' (DAC, 2003, p18).

Such material, however, is part of the increasing literature that not only discusses the origins, structures and operations of ACAs, but also provides information from which critical assessments of ACAs may be made to understand their strengths and weaknesses. There are a number of studies which describe in detail the authorising legislation, the power and remit as well as the organisation and staffing of the new bodies. These descriptive accounts have necessarily improved our ability to understand what these agencies are, what they are trying to do and what resources they possess. We also have studies of a classificatory type which consider different models of ACAs, and the advantages and disadvantages of their establishment (see Box 2), although these do not necessarily analyse why certain institutional configurations are effective in certain country contexts and not others.

Box 2: Advantages and Disadvantages of Anti-Corruption Agencies

Advantages	Disadvantages
• Sends a signal that the government takes anti-corruption efforts seriously; • Higher degree of specialization and expertise can be achieved; • Higher degree of autonomy can be established to insulate the institution from corruption and other undue influences; • The institution will be separate from the agencies and departments that it will be responsible for investigating; • A completely new institution enjoys a 'fresh start', free from corruption and other problems that may be present in existing institutions; • It has greater public credibility; • It can be afforded better security protection; • It will have greater political, legal and public accountability; • There will be greater clarity in the assessment of its progress, successes and failures; • There will be faster action against corruption. • Task-specific resources will be used and officials will not be subject to the competing priorities of general law enforcement, audit and similar agencies; and • It incorporates an additional safeguard against corruption in that it will be placed in a position to monitor the conventional law-enforcement community and, should the agency itself be corrupted, vice versa.	• Greater administrative costs; • Limited pool of qualified staff; • Isolation, barriers and rivalries between the ACA and those with which it will need to cooperate, such as law enforcement officers, prosecution officials, auditors and inspectors; • Possible reduction in perceived status of existing structures that are excluded from the new institution; • May generate competing political pressures from groups seeking similar priority for other crime-related initiatives; and • May also be vulnerable to attempts to marginalize it or reduce its effectiveness by under-funding or inadequate reporting structures.

Drawn from OSCE, 2005 and UNODC 2004

ACAs are very much a continuing developmental phenomenon. While, for example, the European Union pushes very strongly for accession states[2] to establish an ACA, only France, however, of the original members of the European Union has a dedicated agency, which only undertakes prevention functions. Portugal had such a body but abolished it while Italy has focussed its agency on public sector reform. Among the major donors, only Australia has set up an ACA in the New South Wales State and is planning one in Victoria State

.

This is not to argue that the levels and pervasiveness of corruption in these countries are so low as not to justify the need for a dedicated agency. Rather it reflects a tradition of institution-building and coordination, where corruption is addressed through existing institutions and inter-institutional arrangements facilitated by the presence of a certain degree of specialist resource within existing institutions, and differing permutations of functions that often does not require an additional body. Thus, all other EU countries and donor countries have specialised units within their law enforcement authorities, while Queensland in Australia has a hybrid Crime and Misconduct Commission; and the United Kingdom, for overseas cases only, relies on the Serious Fraud Office, which is a government department with policing powers.

Paradoxically, this contrast does not seem to have slowed the momentum in establishing new ACAs – in South East Asia alone, twelve ACAs have been established and remain in existence in the past twenty years[3]; three new ones have recently been created in Cambodia, Timor Leste and Papua New Guinea.

1.2. Types and Functions of Anti-Corruption Agencies

Now, ACAs exist in more than 60 countries. Their mandates differ depending on which functions they are assigned with. The content of each function is also not necessarily the same in all ACAs. Indeed, the responsibilities under the 'prevention' function, for example, may vary considerably between one agency and the other. This situation enables many differences to exist between ACAs, and creates a situation where they cannot be properly considered as one type of institution, nor adequately compared in terms of performance and results.

There are several attempts to classify ACAs into different types and categories. In general, since ACAs usually undertake one of three main functions ('prevention', 'awareness' and 'law enforcement'), they can be 'multi-functional', 'dual-functional' or 'single-functional' agencies. Each configuration may have its own advantages and

2 Of the current accession countries the following set up a dedicated agency: Latvia, Lithuania, Poland, Malta, Slovakia, and Slovenia. Of those seeking accession, Bulgaria, Croatia, Romania, Albania, Serbia, Macedonia Moldova, and Montenegro have established dedicated agencies (although not all of which would be considered as ACAs within the criteria employed in this study).
3 Nepal (1990), Sri Lanka (1994), Pakistan (1999), Thailand (1999), Macao SAR, China (1999), South Korea (2002), Indonesia (2003), Bangladesh (2004), Bhutan (2006), Mongolia (2006), Vietnam (2006), Afghanistan (2009).

disadvantages depending on how many functions are expected to be undertaken by the ACA, what those functions are, and how will they be exercised in the broader context of the country's national anti-corruption institutional arrangements.

Multi-functional ACAs are stand-alone institutions that are dedicated to anti-corruption work and have a responsibility for all of the three main functions. This model, originally inspired by the Hong Kong ICAC, has become more widespread in recent years such as in the case of the Arab region, for example, where five out of the six ACAs established since 2005 are multi-functional (Algeria, Iraq, Jordan, the occupied Palestinian territory and Yemen). In practice, the practical emphasis of multi-functional agencies varies and is not necessarily equally distributed among the three function. Most bring more focus on 'law enforcement' such as the Hong Kong ICAC or the Singapore CPIB, while others, like the Latvian Corruption Prevention and Combating Bureau (CPCB), have managed to develop quite robust programmes on 'prevention' and 'awareness'.

Dual-functional ACAs have a responsibility for two of the three main functions. In reality, however, it is very rare for an ACA to be responsible for 'prevention' and 'law enforcement', without some degree of responsibility for 'awareness' as well. Instead, the most common combination in dual-functional agencies is most likely to include 'prevention' and 'awareness', such as in the case of most Balkan countries, for example, including Albania, FYR Macedonia, Montenegro, Slovenia and Serbia. The perception that those two functions are intertwined leads many to label agencies that undertake them as 'preventive agencies' although technically-speaking these agencies are dual-functional with responsibilities for two different, albeit inter-related, functions as discussed below.

Single-functional ACAs have the responsibility for only one of three main functions. In practice, however, it is rare to assign 'law enforcement' to an ACA independent of some degree of responsibility for other functions, although historically speaking, ACAs were primarily set up to undertake 'law enforcement' functions, but this is not necessarily the predominant approach anymore, since anti-corruption through law enforcement is more frequently assigned to special units embedded in prosecution authorities and/or the police, instead of creating a separate agency dedicated to 'law enforcement' functions alone. Accordingly, and since it is also uncommon to separate 'prevention' and 'awareness' as discussed above, this makes resort to single-functional ACAs in reality rather infrequent, although theoretically possible.

Having gone through the different possible combinations of functions, common practice informs that ACAs are mainly set up as multi-functional agencies (e.g. Iraq, Malaysia, Lithuania) or dual functional agencies tasked with 'prevention' and 'awareness' (e.g. France, Morocco, Slovenia); and that in general, 'cross-cutting coordination' may be assigned to both types of ACAs, as well as to national policy coordination structures (e.g. Iraq, Egypt, Qatar).

The essence of the classification proposed above is to emphasise the idea that functional permutations in ACAs, which evidently vary considerably from one country to the other, define the institutional status of this particular kind of institution. Assigning one function or the other to an agency would have several and serious implications in terms of necessary powers, resources, staff expertise and other organisational requirements. How these implications are dealt with may indeed be decisive in contributing to the ACA's success or failure. Accordingly, discussions on setting up an ACA, or reforming an existing one, must examine and understand the implications of each function, including synergies and complementarities with other functions, internally within the ACA as discussed below, and externally in relation to other state institutions with anti-corruption responsibilities as discussed in section 2.4.

1.2.1. Prevention

Corruption 'prevention' is one of the main functions that are most commonly exercised by ACAs around the world. It is a significant policy-driven responsibility that requires particular expertise and leadership skills. It necessitates an advanced position in government that commands the respect of other institutions as well as the general public, and enables the efficient exchange of information with other public and private entities. There is no consensus on an all-inclusive definition of what 'prevention' entails; but it is generally agreed that prevention involves different types of reforms and sometimes requires overhauling the institutional framework of specific sectors affected by corruption. It requires integrated changes and actions involving multiple actors and stakeholders. When preventive measures pertain to a variety of sectors/institutions, the complexity and scope of the needed reforms grow exponentially.

Drawing on the UNCAC and the available literature, it is safe to say that 'prevention' comprises a wide-ranging portfolio of responsibilities that are further outlined in Box 3. These responsibilities may or may not be assigned, in total or in part, to an ACA. Indeed, 'prevention' may include strategic responsibilities (e.g. formulation of national anti-corruption policies) as well as more technical ones (e.g. development of specific action plans to carry out these policies). It may include responsibilities that require interaction with senior public officials (e.g. operating asset declaration systems) and others that require interaction with the general public (e.g. receiving corruption complaints and reports). The latter may have direct implications for 'law enforcement' efforts, while others may simply be of an advisory nature without any such implications (e.g. providing advice to other institutions on the development of specific prevention measures).

In this context, it is important to note that 'prevention' is not about educating the public on corruption, which instead falls under the 'awareness' function, although it is commonly accepted that 'awareness' does contribute to 'prevention', when, for example, informal payments

for essential services are reduced as a result of a media campaign on the costs of corruption; just as it may contribute to 'law enforcement' when actionable whistle-blowing reports increase as a result of well-designed public service announcements, or when better *de facto* cooperation in the criminal justice system occurs due to targeted awareness-raising activities for law enforcement officials.

Different 'prevention' responsibilities have different implications that need to be carefully considered. Indeed, there is an argument to be made that public administration reform is the key to corruption prevention and locating an ACA outside the process and related structures seems to pose additional problems of authority, access, information and cooperation. If corruption 'prevention' is expected to be one of the ACA's functions, what is the added value of creating a body outside the civil service and outside public sector reform initiatives? How is it expected to influence the work of the more established public sector institutions? In countries with limited resources, how will requisite expertise be identified and recruited to support the new body? Will this help address duplication risks, conflicting priorities, and institutional rivalries, or will it intensify them?

1.2.2. Awareness

Raising 'awareness' on corruption is also one of the main functions that are exercised by ACAs; it is mainly an educational and communicational function that uses media outlets and pedagogic techniques to interact with and influence different audiences, ranging from specific individuals, to larger target groups (businessmen, policymakers, practitioners, students, etc.) through to the general public. Generally speaking, this function includes two main responsibilities. ACAs may advise stakeholders, including public and private entities and individuals, on the development and/or implementation of awareness activities. They may also develop and/or implement such activities themselves, often in partnership with other actors.

Awareness-raising activities may be confined to getting a target group to understand the phenomenon and its costs and manifestations; but they can also include activities that aim to change one's ethical convictions and behaviour. Indeed, the value of awareness-raising is not only confined to changing knowledge and perception level, but rather in shifting attitudes towards rejecting corruption and opting for integrity in one's own actions. To be effective, awareness-raising activities need to engage various stakeholders, including civil society, depending on the target group(s) and the objective and expected results.

Examples of 'awareness' work exist in abundance, including media campaigns, components in school curricula, integrity awards, art competitions, entertainment events, religious and ethical programmes, public service announcements, workshops, seminars, etc. Achieving impact, however, seems to be the more problematic aspect of this function. Experience suggests that ACA officials engaged in anti-corruption awareness-raising tend not to be professional educators. It further suggests that the techniques and means of assessing results are relatively undeveloped.

This leads to a series of questions including what relevant skills and expertise should the ACA possess? Why is not this function left to communication and education professionals? What is expected from the 'awareness' function to achieve, and can an ACA deliver on expectations?

1.2.3. Law enforcement

'Law enforcement' is also one of the main functions that are exercised by ACAs. It mainly refers to the investigation[4] of criminalised corrupt practices and related crimes including commission offenses, money laundering, and the obstruction of justice. This function may also include the responsibility to prosecute these crimes, assist in recovering resulting proceeds, and protect witnesses, victims, experts, collaborators-of-justice, whistle-blowers and reporting persons, as well as other related persons. Finally, 'law enforcement' also entails involvement in international cooperation mechanisms such as mutual legal assistance, extradition, and joint-investigations.

To be effective in contemporary 'law enforcement' work related to serious and complex corruption cases would require a comprehensive substantive law that at least covers the various crimes outlined in Chapter III of the UNCAC. It would also require modernised procedural rules that contribute to swift and effective investigations and prosecutions while safeguarding human rights. ACAs with 'law enforcement' functions require specific contemporary powers on disclosure and explanations of documents, attendance at interviews, financial reporting, restraint of assets, and confiscation. To fulfil this role, such an ACA would require appropriately resourced and trained expertise on financial intelligence, criminal intelligence, criminal investigation, criminal prosecution, civil asset recovery, and case management. It would require adequate independence to carry out its functions, but not to the extent where it becomes isolated from the broader law enforcement context, especially that many required techniques and equipment are also applicable to other crimes (e.g. terrorism, organised crime, etc.) and may therefore be located within another law enforcement authority or more. For this reason, an ACA would also require strong access to relevant facilities and cooperation mechanisms at the national and international levels to maximise the use of available resources and avoid coordination gaps.

All this reveals the complexity of 'law enforcement' responsibilities and highlights the fact that several authorities will constitute an integral part of this kind of work including the police, the Financial Intelligence Unites (FIUs), the prosecution, the courts, as well as related ministries, namely interior, justice and foreign affairs, thus calling for the careful consideration of a number of questions. How will delineation of responsibilities with other law enforcement authorities be achieved? What would be the criteria for information-sharing, joint working, and so on? How will issues of independence be addressed in relation to the prosecution authorities? What is the rationale for removing anti-corruption investigative responsibilities from the police and other bodies? Are investigators to be transferees from the other law enforcement authorities? If so,

4 Investigation is not merely the act of gathering of information, but includes specific actions that are usually reserved to criminal justice authorities such as search and seizure, interrogation, interception of telecommunications, surveillance, testimonies under oath, etc.

why are they expected to perform more effectively under the ACA? If not, where will the ACAs investigative staff have acquired the necessary skills and training? Will it focus on high volume, high value or high ranking corruption? If the latter, is it equipped with special resources and skills to undertake complex cases? The investigation of complex or politically sensitive corruption is extremely challenging and expensive; even sophisticated criminal investigation agencies in developed countries have a failure rate. This suggests that ACAs in developing countries may be setting themselves up to fail if they prioritise this kind of work without ensuring the necessary operating conditions or if they are not properly staffed or resourced.

1.2.4. Cross-cutting coordination

In addition to the three main functions discussed above, and mostly as a result of the UNCAC, ACAs are now required to undertake a fourth cross-cutting function: coordination. Naturally, all conceivable work in the complex realm of anti-corruption requires coordination; reference here, however, is made to the more strategic level of policy coordination that positions ACAs as leaders of inclusive national processes and requires them to address 'prevention', 'awareness' *and* 'law enforcement' and not only one or the other. This cross-cutting function is principally concerned with coordinating the *implementation* of anti-corruption policies, including related strategies and action plans, as suggested in Articles 5 and 6 of the UNCAC, and may also be extended to the actual *development* of these policies, although not explicitly expected to be the responsibility of one particular institution under the UNCAC.

'Cross-cutting coordination' can be easily under-estimated, although experience shows that it might as well be one of the most challenging aspects of anti-corruption work. Whether it is related to policy development *and* implementation or just one of them, this function has several implications. It would require extensive expertise and authoritative leadership capable of ensuring cooperation and synchronization among a range of public and private individuals and entities and across the branches of government including the chief executive, ministries, parliament and the judiciary. It has to be able to interact and direct the work of a range of institutions; and in this context, if the ACA is tasked with 'cross-cutting coordination', it will of necessity sit in judgement on the performance of these institutions which may or may not also relate to its own work, thus giving rise to potential conflicts of interest.

In practice, countries rarely assign the task of coordinating the *development* of anti-corruption policies to a single ACA, although there are several cases where ACAs have been tasked with coordinating *implementation*, especially in countries that have national anti-corruption strategies or action plans in place. Occasionally, some countries have established a higher level body that deals with policy development, often a part-time committee with a small secretariat, but then established an ACA to coordinate the implementation of these policies, with other institutions also being involved in their spheres of responsibility, such as in the case of Iraq for example.

Box 3: Functions of Anti-Corruption Agencies	
Function	**Possible Specific Responsibilities**
Prevention	• Policy / strategy development • Policy / strategy implementation • Policy / strategy advice to other institutions • Institutional reviews and inspections • Codes of conduct and ethics • Asset disclosure and conflict-of-interest systems • Access to information • Legislative drafting • Regulatory quality • Receipt and processing of complaints and reports on corruption cases • Promotion of societal participation in anti-corruption efforts • Research and information gathering • Assessments and diagnostics • Skill development and training • National coordination and cooperation on prevention issues • International coordination and cooperation on prevention issues
Awareness	• Awareness-raising on corruption issues and anti-corruption efforts • Advice to public and private entities on development and implementation of awareness material and activities • National coordination and cooperation on awareness issues • International coordination and cooperation on awareness issues
Law Enforcement	• Investigation • Prosecution • Asset recovery • Protection of witnesses, victims, experts, collaborators-of-justice, whistle-blowers and reporting persons, as well as related persons. • National coordination and cooperation on law enforcement issues • International coordination and cooperation on law enforcement issues
Cross-cutting Coordination (*related to prevention, awareness and law enforcement)*	• National coordination and cooperation on anti-corruption policy / strategy development • National coordination and cooperation anti-corruption policy / strategy implementation • Coordination of sector-specific policies and programs • International coordination and cooperation on anti-corruption policy / strategy development • International coordination and cooperation anti-corruption policy / strategy implementation • Dissemination of consolidated information on progress of anti-corruption efforts

1.3. Issues Associated with Establishing and Operating Anti-Corruption Agencies

This section examines the academic and practitioner literature, which appears to identify or describe issues that may explain some of the causes for the criticism of the work of ACAs and help inform policy-making processes in countries that have ACAs or are considering establishing one.

The literature review shows that analysts and international organisations have had cause to reflect critically on the development and proliferation of ACAs. It also reveals that there are a number of constraints and challenges, which need to be negotiated if ACAs are to make a meaningful and significant contribution to anti-corruption, including the implementation of the UNCAC. Stakeholders now understand much more about why ACAs fail. A number of serious studies have documented some of the most important errors, omissions and inadequacies in the creation and operation of ACAs in developing countries; but the identification of negatives is only part of the process. The next stage is to consider what constructive lessons can be learned and how we can move toward a guide to good practice in relation to ACAs, to assess what does work, and why, and what aspects of internal organisational capacity and external operating environment may facilitate their work.

This does not mean that ACAs are necessarily integral to the fight against corruption, nor does it mean that there will only be one template that suits the needs of ACAs in all countries that decide to have them. Much may depend on what already exists in terms of institutional arrangements and even more, on the form, depth and spread of corruption in each country. Different situations in different countries will need different solutions. With countries that already have ACAs, it may be harder to give a new focus or sense of direction; where ACAs already exist, economic and political realities will probably dictate more piecemeal progress toward good practice. In countries that are contemplating establishing ACAs, however, it is important to pay closer attention to lessons learned from related experiences, including the stories of the many fledgling ACAs that were established in the past 20 years and are struggling to deliver on the promises of their founders.

Overall, the literature draws our attention to a series of issues that are associated with setting up and operating ACA. Some of these issues are caused by external influences that affect the ACAs' work (see 1.3.2), while others are more internal related to how the agency is organized and structured (see 1.3.3). Both types of issues have a bearing on the performance of an ACA and ultimately its success or failure, and thus should be carefully considered when setting up a new agency, or when seeking to enhance the work of an existing one.

1.3.1. Rationale

Before moving onto the external and internal issues associated with setting up and operating ACAs, it is important to revisit the basic question: why an ACA in the first place? Exploring the different aspects of this basic question helps inform the discussion on whether an ACA is actually needed or not. Experience has shown that such discussions are often prejudiced from the start, and the decision is usually pre-made, thus undermining a meaningful discussion on the 'why' and directing resources to the 'what', 'how', 'who', 'where' and 'when'.

De Souza notes that there are 'a series of (un)intended errors committed at the conception stage that will have negative repercussions on the agencies' future performance' (de Souza, 2009, p20). Indeed, during the last two decades, the establishment of ACAs seems to have been mostly driven by external pressures in the context of EU accession and/or UNCAC implementation; in fewer cases, the decision was made to appease civil society usually in the wake of serious corruption scandals. Either way, ACAs were set up first, and thinking on how to make them effective came later. Very rarely did the establishment of an ACA draw on evidence-based thinking and broad-based consultations. The result, many argue, was wasted resources, dissatisfied stakeholders (including donors and development partners), disgruntled citizens, and in some cases further diminishment of government credibility.

Without a clear understanding of the rationale for setting up an ACA, as opposed to adopting different institutional arrangements, it is less likely for a country to succeed in having an ACA that delivers anti-corruption functions effectively. Thus, it is important to draw the attention of policy-makers to a number of indicative questions that would help mitigate some of the risks associated with setting up and operating ACAs.

Why is an ACA being proposed? Are there credible and compelling reasons for creating one? Was a risk assessment/strategic review undertaken? What is the ACA's mission? Have priorities been discussed and agreed? *Without a clear mission an ACA begins work as a reactive institution. This in turn constrains effective business planning and organisation.*

Has there been a prior evaluation of existing anti-corruption legislation, programmes and those other institutions with anti-corruption roles and responsibilities? If not, why not? *Without some understanding of the limits of existing laws, institutions and programmes it is difficult to identify needs and avoid duplication and overlapping of responsibilities and tasks.*

If current legislations, programmes and institutions are deficient, what grounds are there for believing that an ACA can overcome these perceived deficiencies? Where

is the 'comparative advantage', or the 'added value' in establishing an ACA rather than addressing the problems of existing institutions? Are there comparative disadvantages in ACAs? *Without assessing the place of the ACA within the existing institutional landscape, the ACA may create new problems in coordination and implementation of anti-corruption work.*

Is the ACA part of a more comprehensive response to corruption? Is it seen as the default response to increasing domestic discontent about corruption or in response to external pressures? Is it then seen as some kind of quick, off-the-shelf response to demonstrate the leadership's sensitivity and responsiveness to domestic and international concerns? *If the question to which the ACA is the institutional response is not established, then the ACA will lack an agreed substantive role from the outset. Alternatively attempts to seek too many solutions in a single agency may lead to difficulties in balancing and resourcing multiple functions.*

What permutation of functions will be assigned to the ACA? What is the justification for the permutation? If there is more than one function, how would they be integrated (for example, extensive awareness campaigns can trigger off a volume of complaints that investigations cannot handle if their focus is a limited number of complex cases involving senior public officials)? How will the ACA work with other institutions that have related responsibilities? What will be the budgetary process and the balance of resources? How will results and performance be measured? How will the different functions contribute to the overall objective of fighting corruption? *Without a pre-assessment and an ACA strategy, the tendency of ACAs is to become involved in constant activity and output, without an understanding of why and to what objective(s) so that process often substitutes for purpose.*

How are the expected results calculated and expressed? Are they misplaced or not underpinned by the necessary laws, resources, and so on? *Where expectations are very high and performance levels fall a long way short, the scope for donor fatigue and public and political disillusionment is considerable. There needs to be a better fit between operational realities and achievable objectives.*

Will the ACA be provided with the requisite internal management capacity to deliver expectations? *Many ACAs have been established without such prior assessment and the focus has been more on activities and programmes rather than on management and business processes and planning.*

1.3.2. External influences

In looking at ACAs' operating environments it is worth making the point that not all the failings lie with ACAs as institutions; similarly, not all successes may be attributed

to them alone. In other words, it is not simply an issue of why and how an ACA is set up, but also the external influences that will affect its work, its management and its ability to perform its functions from the onset and subsequently.

Political Acceptance Support

One preliminary issue that needs to be addressed is the question of political acceptance to support an ACA or, at a minimum, not to interfere in its work. Certainly the negative impact of political leadership can be significant, ranging from the decision in Portugal in 1992 to close the Alta Autoridade Contra a Corrpucao (AACC) to the 2010 attempts by the Mongolian government to suspend senior managers of, and remove the investigation function from, the Independent Anti-Corruption Commission (IACC) in 2010.

In the case of Portugal, it was argued that the agency 'had become expendable because it had bothered too many people and too many interests' (De Souza, 2006, p4). Here it could be said that the agency lacked the political will or commitment necessary to survive and operate. 'Political will' is the most frequently stressed mantra in fighting corruption, and often the 'culprit for poorly performing anti-corruption programmes. Yet despite the frequency with which it is used to explain unsatisfactory reform outcomes, political will remains under-defined and poorly understood. Further, assessments are often conducted retrospectively, looking back at failed programmes' (see Brinkerhoff, 2010).

Part of the problem is why 'political will' should only apply to ACAs when it is rarely discussed as an issue in relation to, for example, the work of Ombudsmen or, agencies responsible for drugs and organised crime or even the FIUs, which are responsible for anti-money-laundering, asset recovery and reporting on Politically-Exposed Persons (PEPs). Part of the problem is that it is too often used only in relation to political leaders rather than as a pervasive issue. Here the question is whether there is general engagement – in legislatures, in other state institutions, in business communities, among NGOs, in the professions and the courts as well as in the international community and partners – as to the need for, and thus support of, an ACA. Indeed, societal support can also be considered to be part of the political support that an ACA needs in order to succeed. Experiences show that without it, anti-corruption policies are more likely to produce limited results. Part of the challenge facing political leadership in this case would be how to act, and enable other institutions to act, in order to mobilize societal will and motivate people to act against corruption and with integrity.

As Brinkerhoff argues, political will is neither a yes or no issue, nor one divorced from institutional capacity and the roles of other institutions. Rather political will may be better seen as a general intention to wanting to address corruption from top-down and bottom-up perspectives as well as acting to address corruption through *de jure* adoption of good standards and their *de facto* implementation. Given the range of laws, institutions

and procedures to be engaged, political will is more about acceptance of functional independence and the availability of a supportive enabling environment in terms of laws, adequate resources and inter-institutional arrangements that allows the ACA to do the work it wants to do.

Enabling Environment

ACAs do not operate in a vacuum and are not able to refashion the world to their own liking. It is therefore important to produce an assessment of the enabling environment before establishing or reforming an ACA. Such an assessment could have many aspects but among the most important are:

The legal environment: does the rule of law operate? Are the laws against corruption adequate? Is there a functioning court system? Are there special prosecutors and/or courts for corruption cases, and if yes, do they function properly? In many countries, judges are responsible for the administration of the court timetable as well as adjudicating on cases; in others the number of available judges is limited. Where trials are frequently subject to lengthy delay and then become protracted in their hearings, the credibility of the judicial process is undermined and much of the investigative work of ACAs is negated.

The political environment: to what extent does the political leadership uphold the principles of separation of powers? Does the proposed ACA enjoy the support of the main political parties? How stable is the political system? What commitment is there to the democratic process? What form does the political regime take? Is it a presidential, parliamentary or mixed system and what different institutional implications flow from these arrangements? Different countries enjoy differing levels of democratic consolidation and this clearly impacts on the absorption and diffusion of political values and morality as well as on the degree of institutionalisation achieved by the ACA.

The economic environment: how stable and productive is the economy and revenue base? What is the nature of the economy and the percentage of rent-based (non-productive) sectors and speculative economic activity? What is the wage level of public employees relative to the inflation rate? What is the size of the informal sector? Can a consistent flow of financial and other resources be relied upon by the ACA from the government and is it protected from cuts? Are related bodies, such as the police and courts, appropriately funded? What is the balance between government funding and donor funding, if any, and the balance between the uses of incomes (i.e., do donors pay for core funding such as salaries?). The scope and effectiveness of the ACAs is linked to financial viability and autonomy, especially in terms of predictability and continuity in funding, although a number are poor at resource planning and the balance between substantive functions and management functions.

The social environment: ACAs need to interact with the wider society in a variety of ways, often requiring not only generalised public support but particular forms of support, such as credible complaints and whistle-blowing arrangements (although these are often dependant on cultural issues), as well as evidence of impact. One valuable tool in this respect is the baseline surveys of corruption which give snapshots of the public's perceptions or experiences of where corruption is most concentrated and most damaging to public trust in government. Unfortunately, these surveys are often too infrequent or conducted on differing bases making evaluations of progress in garnering popular support for fighting corruption more difficult.

The corruption environment: how serious is the threat of corruption and what analyses are there of the main forms and patterns of corruption in the country? In particular, what types of corruption cannot be dealt with adequately by existing institutions? The popular 'zero tolerance' approach to corruption may be unhelpful in forming anti-corruption strategies because it offers no means of prioritising action. What is needed is a clear understanding of which forms of corruption are most problematic and which sectors, institutions and activities are most vulnerable. Without a clear understanding of risks and priorities the ACA cannot be strategic; it also cannot build coalitions of relevant stakeholders and institutions to ensure horizontal integration in support of its work.

The institutional environment: what is the system through which public sector institutions are managed and controlled? How transparent is that system and to what extent it allows decision-makers discretionary powers? How clear and reasonable is the regulatory framework? What are the functions and structure of oversight institutions and how effective and coordinated are they? How streamlined are institutional processes and how coordinated are they?

The crime environment: what is the nature of the crime environment? Is the country a transit route for trafficking in drugs or people? Is it rich in natural resources? Is it used for drugs cultivation? What is the link between these threats and the police, the military and the politicians? How far are the proceeds of corruption concealed, co-mingled or transferred abroad? What are the links between PEPs and corruption on a systematic basis? How far can the ACA work with relevant institutions, such as terrorist finance and organised crime units and the FIU?

The governance environment: what are the ACA's relations with other governance institutions, namely the public administration, and what are the means or arrangements for inter-agency coordination and cooperation – in relation to its functions and in relation to UNCAC? In some cases it may lead to other bodies abdicating their anti-corruption responsibilities while in others rivalry, tension and duplication are evident. Does the ACA enjoy superior or equal status and partnership with other institutions involved

in anti-corruption efforts or is it seen as unnecessary and its role seen as unwelcome or, conversely, considered an opportunity for other institutions to divest themselves of their own responsibilities or to lower their levels of resources and commitment on the assumption that the ACA will pick them up? Is coordination and information exchange systematised and regular or sporadic and problematic? More generally what is the level of the competence of public and private sectors institutions in terms of accounts, record-keeping and other management and governance arrangements that may inhibit or facilitate the work of the ACA?

The donor environment: while a number of countries have informal or formal donor groupings in relation to specific areas, such as justice programmes, donor 'capture' of institutions is common, which means that the institution is made dependant on that donor's funding and that donor's selection of consultancy support. In a number of cases, the balance between donor funding and core government funding is tilted toward the former which makes longer-term planning a challenge. Donors also have a focus on 'success' within short timeframes, often at the expense of building backroom expertise, investigation confidence and competence, and senior management capacity. One notable feature is the ability of donors to influence the mandate of ACAs through the consultants they use and the funding they provide, often without reference to the country-specific nature of corruption and the ACA's capacity and focus.

Legal Status

Finally, the most common debate around creating an ACA is whether it pursues its statutory mandate free from political interference or whether it is an institution like any other under state control and direction. There is therefore a need to evaluate the 'independent' and the 'embedded' models of ACA organisation. Given that independence is often more formal than practical, the choice may not be as binary as it appears. The 'embedded' model is sometimes dismissed as subject to easier political control and influence, but in compensation it may also enjoy more powerful support and patronage in its engagement with or conflicts with other government entities.

While the legal status of an ACA can be of significance, it should not be seen as any guarantee of freedom from political interference. Governments can interfere with the viability or credibility of an ACA by restricting its budgets, or appointing compliant directors, or 'acting' directors who cannot then exercise the powers of a permanent appointment or, in some cases, by not appointing anyone for a prolonged period leaving the agency effectively leaderless. Such tactics are not, however, specific to ACAs; and in considering what 'independence' means, it is important to look beyond the question of institutional architecture to organisational, functional and financial independence.

When considering the 'independence' of ACAs we need to remember that all ACAs are

funded from government budgets and the allocations they receive annually are matters of political judgement and priorities, that Inter-agency accountability procedures and mechanisms can also be utilised by political and bureaucratic opponents to obstruct or even paralyse an ACA. In common law countries, for example, where the Attorney-General's consent to prosecution is required, it is not always forthcoming. Similar issues arise in civil code countries where the leadership of the investigation lies with the prosecutor. What is important here is the ACA's independence to apply its capacity to the work that it has identified as strategically central to delivering its mandate under its legislation.

1.3.3. Internal organisation

Through an analysis of the ACA's operating environment an understanding can be reached of the types of corruption it faces, of how far the surrounding environment will inhibit or facilitate its work, and of its relations with other institutions. Such an understanding, however, will only be as useful as the ACA's capacity to deliver its mandate. It is therefore important to produce an internal assessment to identify capacity gaps that may prevent an ACA from fulfilling its mandate and support needed reforms. Internal capacity assessments would provide a deeper and more holistic understanding of the various internal organisational constraints and individual and institutional capacity gaps that may negatively influence the work of the ACA, and which can be related to a number of issues discussed below.

Management capacity

Too often, ACAs seem to lack the essentials of modern business organisations. Donors are often more interested in funding visible programmes and activities than in helping to develop 'back-office' management resources and effective business planning processes. If the organisation of the ACA is dysfunctional and lacks appropriate skills, planning, resources, processes and strategies, its prospects are poor. Founders and funders need above all to understand the importance of ensuring that ACAs have the infrastructure capacity appropriate to its mission. The key management issue is what should the ACA do (its strategy) and what can an ACA actually do in practice? It is precisely this match between the focus of the ACA and its organisation and management which is a critical success factor. Strategy should be informed by the nature and scale of the corruption problem and in turn strategy should shape organisational design and structures. In determining management priorities it should be recognised that organisations, especially immature ones, have strengths and weaknesses and, if ACAs are unable to match their strengths with their priority functions, it will be even harder to demonstrate 'success'.

Technical capacity

As discussed above, ACAs exercise different permutations of roles that have different internal organisational implications, thus raising a multiplicity of challenges that must be addressed for ACAs to enjoy the needed technical capacity appropriate to their missions.

Key implications for each function are discussed in more detail in section2.2. One important issue common to all functions is the ACAs' technical capacity, particularly the competencies of its leadership and technical staff. Competencies here refer, not only to education, professional experience, and skill levels, but also to motivation, integrity, and ethical composition of the ACA's staff, especially the core staff. The success of an ACA, like an institution, is contingent on its ability to acquire and maintain people of high calibre. For this purpose, the ACA will have to rely on experienced professionals, but can also direct some attention to recruiting young talents, while making the effort to properly manage their career development and accelerate their progression in career paths.

The main issue is how far the various functions and related responsibilities provide the basis of commonality in terms of a single institutional location. There are synergies relating to asset disclosure, conflict of interest and illicit enrichment and to education and awareness (as well as cooperation with the public and the private sectors), while any inspection or institutional review could lead to a criminal investigation. How far do these functions and responsibilities require a single institutional location needs careful consideration. Although location within a single body provides economics of scale and linkages in terms of use of expertise and sources of information, they still could be undertaken by two or more institutions, so long as there were clear and operational information-sharing and coordination legal gateways.

In general, research shows that many ACAs currently operate with limited case management processes and lack expertise in intelligence, team working and working with prosecutors, while some others face serious challenges in developing and implementing targeted and results-oriented prevention programmes and end up focusing allocated resources on activities that are essentially awareness-raising and public outreach work.

Independence

Some ACAs take the concept of independence to the point that they are reluctant to engage with other institutions, in part to protect their institutional autonomy or ownership of anti-corruption work, in part because they do not see themselves as an institution of government, and in part because they mistrust the integrity and intentions of other institutions. Linked to the governance environment discussed earlier in this study, some ACAs can become secretive, inward-looking and unwilling to become involved in joined-up anti-corruption work.

Results

Setting up an ACA without any clear idea of how to measure performance leads to activity without the means to assess results. Many ACAs have been established without performance measurement systems in place. As they have developed, most have presented accounts and reports on a range of activities relevant to their functions such as numbers

of investigations/prosecutions or public awareness raising events held with attendances, but it is usually not clear how such activities connect with the overall aim of reducing corruption. Are cases analysed to understand the underlying cause of corruption and does the preventative function focus in these causes accordingly? Can the ACA enforce reform and who scrutinises whether or not the reforms are effective?

Addressing issues related to performance and results requires a realistic assessment of what is possible given the many constraints, and what the ACA is best placed and best equipped to undertake. Instead of imposing tasks on the ACA, the real challenge is for senior management to identify the tasks the agency is capable of discharging and ensuring these are mutually reinforcing rather than expecting it to undertake a wide range of potentially incompatible activities. Performance and results measurement ultimately relates to the added-value of ACAs' work on addressing corruption – the argument that validates and justifies the single agency. Of course, the difficult issue is determining the appropriate criteria. For instance, Quah's attempt to do so (2009) results in a list of activity and output indicators which do not necessarily define the added-value of having an ACC in achieving those indicators (as opposed to another institution in the public sector or a specialised unit in law enforcement authorities), the level of the focus of its work, and nor of the impact of the agency in addressing anti-corruption work; his approach does not appear to support his argument for 'the objective method for evaluating their performance' (Quah, 2009, p21). ACAs would be more likely to achieve success if they concentrate on what they can actually do and not on what others think they ought to be able to do. On the other hand, success is often in the perceptions of others; in addition to the public perception surveys, the role of the Legislature can be central to publicly endorsing the work and credibility of the ACA.

2. IMPLEMENTING THE UN CONVENTION AGAINST CORRUPTION: ANTI-CORRUPTION AGENCIES AND ALTERNATIVE INSTITUTIONAL ARRANGEMENTS

2.1 Introduction to the UN Convention Against Corruption

The UNCAC is an international anti-corruption treaty adopted in 2003 and entered into force in 2005. It is the first global normative framework that includes an elaborate set of mandatory and optional measures for preventing and combating corruption, including innovative measures to promote international cooperation and assist in recovering the proceeds of corruption. More specifically, the UNCAC is composed of eight Chapters including 71 Articles. It starts with a chapter on 'general provisions', continues with four substantive chapters dealing with 'preventive measures', 'criminalisation and law enforcement', 'international cooperation', and 'asset recovery', followed by a chapter on 'technical assistance and information exchange', a chapter on 'mechanisms for implementation' and a last chapter on 'final provisions'.

This section discusses the purpose and the content of Articles 6 and 36 of the UNCAC. It explores related implementation modalities including the establishment of an ACA and alternative institutional arrangements to undertake anti-corruption work and contribute to UNCAC implementation; however, before proceeding, it is important to clarify four points about the UNCAC that would assist in better understanding the following discussion.

First, the UNCAC is the most comprehensive of all existing international anti-corruption conventions; it is also subject to an inter-governmental review mechanism whose overall goal is to assist States Parties in identifying implementation gaps and exchanging technical assistance to bridge those gaps using a computerized self-assessment checklist
.

Second, it draws upon other UN instruments and conventions, specifically the UN Transnational Organised Crime Convention, which means it replicates or reflects certain law enforcement approaches, and requires decision-makers to be aware of synergies that may exist with other relevant institutions and initiatives in their respective countries.

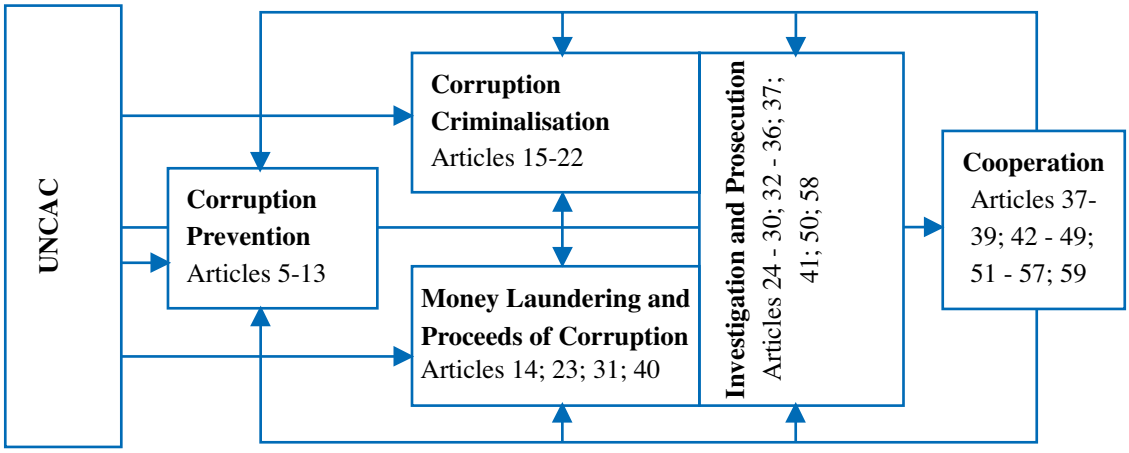
Third, it is intended as a broad anti-corruption framework; it was not intended as a specific mandate for ACAs or an exclusive roadmap they need to adhere to. It is one of the numerous regional and international anti-corruption conventions adopted in recent years, including the African Union Convention on Preventing and Combating Corruption, the SADC Protocol against Corruption, the OECD Convention against Bribery of Foreign Public Officials, the Inter-American Convention against Corruption, ADB-OECD Anti-Corruption Action Plan for Asia-Pacific, and the Council of Europe Criminal Law Convention on Corruption, and most recently the Arab Convention Against Corruption.

Fourth and finally, UNCAC should not necessarily be read – or implemented – only in terms of its sequential Chapter/Article structure, but rather in the way most compatible with the priorities and needs of each concerned institution/country. One useful approach is to use substantive themes as the overall framework and view the relevant articles accordingly. Themes can be broken down differently depending on the users' requirements. In general, there are five broad thematic groupings under the Convention:

- Corruption Prevention: Articles 5 – 13
- Corruption Criminalisation: Articles 15 – 22
- Money Laundering and Proceeds of Corruption: Articles 14; 23; 31; 40
- Investigation and Prosecution: Articles 24 – 30; 32 – 36; 37; 41; 50; 58
- Cooperation: Articles 37 – 39 (domestic); Articles 42 – 49 (criminal) Money laundering and Asset Recovery – Articles 51 – 57; Article 59 (general)

This thematic grouping is helpful in delineating responsibilities and understanding synergies between the different UNCAC requirements related to the same theme. In their totality, these groupings provide a matrix that shows how a significant number of UNCAC Articles are complementary and mutually supportive (see Figure A).

Figure A: Overall Thematic Grouping of UNCAC Articles



Similarly, if one is planning to consider the explicit institutional requirements under UNCAC, it is useful to identify the relevant thematic grouping, which includes Articles 6, 14, 36, and 58.

Articles 14 and 58 encourage States Parties to establish FIUs in order to prevent money laundering and increase the effectiveness of cooperation for asset recovery. FIUs are central, national agencies responsible for receiving, requesting (if permitted), sharing, analysing and disseminating to competent authorities disclosures of financial information concerning suspected proceeds of crime and potential financing of terrorism, or required by national legislation or regulation, in order to counter money-laundering and terrorist financing. They are a fairly-established type of institution that exists in more than 110 countries and cooperate through an informal global organization called the Egmont Group (UNODC, 2009, p. 213).

Other than the FIU, there are only two other areas where the UNCAC explicitly discusses the establishment of institutions:

- *Article 6 calls for the existence of a body or bodies, as appropriate, that prevent corruption by such means as: (a) implementing the policies referred to in article 5 of this Convention and, where appropriate, overseeing and coordinating the implementation of those policies; and (b) increasing and disseminating knowledge*

about the prevention of corruption.

- *Article 46 calls for the existence of a body or bodies or persons specialized in combating corruption through law enforcement.*

Under the UNCAC, both Articles are mandatory unlike the requirement to establish an FIU. Their implementation, however, raises a number of important conceptual, legal, procedural and resource issues and invites a key question: what institutional arrangements would satisfy the requirements of Articles 6 and 36, and do they require the establishment of an ACA? The following discussion examines the requirements of both Articles and explores possible responses by States Parties.

2.2 Article 6 on 'Preventive Anti-Corruption Body or Bodies'

The first point to note is that, under Article 6, there may be one or more bodies. This suggests that the responsibilities under the Article are not necessarily expected to be undertaken by one body, and may be allocated to a number of bodies that may be already in existence or newly established. To determine what these responsibilities are, we need to take a closer look at Article 5 on 'preventive anti-corruption policies and practices', which is cross-referenced in Article 6.

It is generally accepted that Article 5 requires each State Party to develop and implement a comprehensive anti-corruption strategy that puts in place the overall context and framework to prevent corruption, as required by the Convention. In particular, Article 5 expects States Parties to:

- *Develop and implement effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.*
- *Establish and promote effective practices aimed at the prevention of corruption.*
- *Periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption.*
- *collaborate with each other and with relevant international and regional organizations*
- *Increase and disseminate knowledge about the prevention of corruption.*
- Article 6 articulates the institutional requirements needed to carry out the anti-corruption prevention policies and practices outlined in Article 5, by requiring the existence of an independent 'body or bodies' that has adequate resources and well-trained staff and is responsible for:
- *Implementing the policies referred to in article 5 of this Convention and, where appropriate, overseeing and coordinating the implementation of those policies;*
- *Increasing and disseminating knowledge about the prevention of corruption.*

Clearly, there is not any reference to investigation or any other law enforcement function, nor do the responsibilities of the 'body or bodies' in question include *developing* 'anti-corruption policies and practices' or the formulation of a national anti-corruption strategy, but rather focus on knowledge development and the *implementation* of 'anti-corruption policies and practices', which essentially include Articles 5-13, according to Figure A, and excludes Article 14 (concerned with preventing money-laundering, not corruption *per se*, and is more sensibly left to FIUs). This effectively means that the Article 6 'body or bodies' would be responsible for enhancing societal participation in anti-corruption efforts (Article 13), promoting public reporting and access to information (Article 10), and preventing corruption in civil service and some aspects of political life (Articles 7 and 8), procurement and public finance (Article 9), the judiciary and prosecution (Article 11) and the private sector (Article 12).

The UNCAC expects this broad portfolio to be carried out through a variety of means outlined in Articles 5 and 6, including, but not limited to:

- Implementing and possibly overseeing or coordinating, national anti-corruption policies
- Establishing and promoting effective corruption prevention practices
- Engaging society in ant-corruption work
- Promoting the Rule of Law
- Promoting the proper management of public affairs and public property
- Promoting arrangements for integrity, transparency and accountability
- Evaluating laws, regulations and administrative measures
- Promoting collaboration with other States Parties as well as regional and international organizations
- Increasing and disseminating knowledge about the prevention of corruption

The UNCAC Technical Guide makes more specific suggestions on what kind of responsibilities may Article 6 'body or bodies' undertake:

> 'requiring public sector institutions to produce specific plans of action and guiding/reviewing their implementation; undertaking evaluations or inspections of institutions; receiving and reviewing complaints from the public, receiving audit, investigative or parliamentary reports from those bodies responsible for anti-corruption investigations; undertaking research into legislation and administrative procedures; undertaking public opinion surveys, and developing other sources of information; and taking evidence on and conducting hearings for periodic reviews of progress on the anti-corruption plans' (UNODC, 2009, p. 10).

Furthermore, implementing Articles 5 and 6 is subject to '*the fundamental principles of [the State Party] legal system*', meaning that the UNCAC is not necessarily requiring the

establishment of a specific type of institution, but rather acknowledges that there will be many possible ways to set up the 'body or bodies' in question, depending on the legal system of each concerned country.

Establishing an ACA, whether only preventive or with more functions, may be a potential response to Article 6, but is not necessarily a mandatory response, and certainly not supposed to be the only one. Indeed, when breaking down the specific elements of the remaining UNCAC Articles on prevention, it could be argued that a more complex set of institutional arrangements is needed, as suggested in Box 4. For example, measures under Article 8 are the responsibility of civil service bodies in most countries, while Articles 9 and 11 are specific in terms of expecting the involvement of audit, parliamentary, judicial and other institutions.

Box 4: Corruption Prevention under the UNCAC and Related Institutions

Article	**Related Institutions**
Article 7: Public Office Requirements	Civil service body Prime Ministry Election Commission Ministry of Interior Ministry of Public Sector / Administrative Development
Article 8: Codes Of Conduct For Public Officials	Civil service body Line ministries Ethics Commission Ministry of Public Sector / Administrative Development Specialized inspection body
Article 9: Public Procurement And The Management Of Public Finances	Procurement body Comptroller And Auditor General's Office State Audit Ministry of Finance Revenue Authority Parliament
Article 10: Public Reporting	Ombudsman; Freedom of Information body
Article 11: Measures Relating To The Judiciary And Prosecution Services	Supreme judicial body Judicial services body; Prosecution body Ministry of Justice

Article 12: Private Sector	Ministry of Trade / Commerce / Business Stock Exchange Central Bank Economic Development Board Ministry of Finance Securities And Exchange Commission; Civil service body
Article 13: Participation Of Society	Data protection body Freedom of Information body Ministry of Interior

Accordingly, States Parties may wish to consider the various institutions involved in terms of *de jure* mandate and *de facto* performance, prior to making decisions on the implementation of Article 6. The primary concern should be the effective delivery of corruption prevention functions and not setting up new institutions, unless such institutions are in fact needed, bearing in mind the wide array of possible responses that are discussed in this study. Ultimately, the response will depend on the particular circumstances of the country in question.

In all cases, whether the country establishes an ACA, or decides to adopt alternative institutional arrangements to prevent corruption, the UNCAC requires that related institutions are provided with the 'necessary independence' and 'necessary material resources', and are staffed with specialized and adequately trained professionals. These requirements are mandatory and are put in place to ensure the proper functional performance of Article 6 'body or bodies'. The UNCAC Technical Guide provides further guidance to States Parties on related issues (UNODC, 2009, pp11-12), and confirms that ultimately, implementation modalities would vary depending on the particular situation of each country and the responsibilities of the 'body or bodies' in question, as discussed in section 1.

2.3 Article 36 on 'Specialised Authorities'

Article 36 requires States Parties to ensure the existence of 'a body or bodies or persons specialised in combating corruption through law enforcement' that have the 'necessary independence' and 'appropriate training and resources'. In other words, it is not enough to merely assign the responsibility of combating corruption to a generic law enforcement authority, like the prosecution or the police, without taking further measures. Instead, the State Party may either establish a special body (or more), exclusively in charge of corruption, possibly an ACA, or ensure the existence of specialised persons, who may or may not form a dedicated unit (or units), within a more comprehensive law enforcement authority (or more).

Similar to Article 6, Article 36 does not prescribe the establishment of an ACA; but in contrast, it does not outline any specific responsibilities for the institutional arrangement it is

calling for. Instead, Article 36 makes it plain that the 'specialised authorities' it is referring to shall be tasked with combating corruption through law enforcement, thus implying responsibility for an extensive portfolio of crimes and measures that are articulated by the UNCAC and outlined below:

- specific criminal offences including not only long-established corruption crimes such as various forms of bribery and embezzlement, but also conduct which may not already be criminalised in many States, such as illicit enrichment, trading in official influence and other abuses of official functions;
- conduct offences intended to protect the investigation of corruption, including offences relating to obstruction of justice, protection of witnesses, experts, victims, reporting persons and others, use of specialist techniques, data sharing, joint operations, and so on;
- money-laundering, the seizing, freezing and confiscation of proceeds or other property, mechanisms for both civil and criminal asset recovery procedures, whereby assets can be traced, restrained or frozen, seized, confiscated or forfeited and returned, and so on.

This portfolio is usually organized by general criminal law and criminal procedures law, and in some cases, by special legislation (e.g. economic/commercial crime, money-laundering, terrorism financing, etc.). An adequate legal framework allows the specialised authorities to act effectively in investigating related offences, in having their investigations proofed against interference, and in recovering the proceeds of crime. In most countries, this involves various authorities that undertake different complementary responsibilities, such as the police (investigation, protection of witnesses, etc.), judicial bodies (conduct of judges, adjudication of cases etc.), the FIUs (money laundering, asset recovery, etc.), the prosecution authorities (investigation, prosecution, etc.), ministries of justice and foreign affairs (mutual legal assistance, extradition, etc.). It also involves foreign national law enforcement authorities, as well as concerned multilateral institutions, such INTERPOL or the European Anti-Fraud Office (OLAF) given the cross-border nature of many corruption crimes.

Accordingly, responding to Article 36 has to carefully consider the missions, responsibilities and capacities of other involved law enforcement authorities, and possible implications for the missions, responsibilities and capacities of the 'specialised authorities' that are required to exist. For example, these 'specialised authorities' will need to take advantage of specific requirements, from specialist investigation techniques[5] to witness protection, which are technically-demanding and have serious resource implications, and which would have already been developed in relation to other crimes by other law enforcement authorities, most notably in relation to organised crime and drugs.

Making decisions on what Article 36 'specialised authorities' will look like has to take the law enforcement context into consideration. What further complicates the decision-making process is the possibility of merging Article 36 together with Article 6

5 Such as telephone intercept, bugging; physical surveillance and observation; undercover operations and the use of sting operations; informants; integrity testing

to form a multi-functional ACA replicating the Hong Kong model. This option, although neither explicitly required by the UNCAC nor recommended by the majority of experts, is still a common institutional response to corruption, mostly in developing countries. Here, the main question for decision-makers is the following: which option would have the better capacity to investigate and prosecute corruption given the law enforcement context of the particular country in question? For example, which option would be better positioned to receive, analyse and take action on the FIU's reports on suspicious financial transactions, a number of which may be corruption-related and would either be able to undertake actions against money laundering and on asset recovery as a consequence? From the perspective of an FIU, it may well be that it is more comfortable working with the prosecution offices, the police or the revenue authorities, which will be using FIU information on to address a broader category of crimes including organised crime, drugs trafficking, and tax evasion, than an ACA whose status may be less defined and whose specialism may make it a target for those whose Suspicious Activity Reports (SARs) are passed on, to negate its work.

The added value of each option needs to be carefully evaluated taking the situation of each country into consideration. This task would be easier in countries that have clear and comprehensive national anti-corruption strategies as required by Article 5. Ideally, such an evaluation will not only consider *de jure* issues but also *de facto* challenges including the interplay with other institutions, local capacities and the dynamics of international cooperation in law enforcement. For example, in those countries where a domestic PEPs list is in operation, will a new body find its priorities reactively driven by an FIU-led agenda and its 'success' more sharply defined in terms of delivering those priorities? This may be less so for an ACA primarily set up as an Article 36 body but will certainly impact on the work of any ACA set up with both Articles 6 and 36 responsibilities. Another example is the establishment of a formal joint investigation in corruption cases as required by Article 49. This requires the resolution of a large number of legal and practical matters before making a decision on the implementation of Article 36, including the liability of officers from a foreign force but working under the auspices of a joint investigation, disclosures, implications of the use of covert operations, identification of evidential difficulties and the means of resolving them, appropriate charges and the retention of operational data for law enforcement purposes in more than one jurisdiction. Such issues are often an integral part of law enforcement work, and will certainly be expected of Article 36 authorities. Having a unit focused on corruption, within a law enforcement authority, instead of having a new body, means that these issues will not present significant challenges in terms of prior training of investigators, normal detective work, legal powers, and working with prosecutors and other law enforcement authorities, and so on.

Obviously, there will be a number of advantages and disadvantages for the different implementation modalities of Article 36. While establishing an ACA may be demanding in

terms of resources, technical support and staff expertise, it is potentially better positioned to give impetus to and ownership of anti-corruption efforts, and enhance the independence of related investigations. On the other hand, opting for specialized persons forming a unit within a larger law enforcement authority may not appease concerns about the inadequacy of law enforcement systems or be a favoured option in countries that have severe political corruption problems; however, it certainly help decrease institutional impediments and coordination problems and reduce start-up costs and potential rivalries between a new body and existing authorities that are already engaged in combating corruption.

2.4 State Institutions with Anti-Corruption Roles and Responsibilities

As the analysis of Articles 6 and 36 shows, the UNCAC does not prescribe particular types of anti-corruption institutions. Instead, it focuses attention on the delivery of specific functions and leaves decisions on requisite institutional arrangements to the prerogative of the State. The UNCAC does not require countries to establish a dedicated ACA, nor does it designate any specific responsibilities to an ACA should it be established, and nor does it suggest the combining of the responsibilities under Articles 6 and 36 into a single agency, although it is clear that many countries have seen an institutional value in centralising anti-corruption work in one single agency. For that agency to take on all or most of the roles and responsibilities proposed under Articles 6 and 36 is a matter that needs careful consideration in organisational development, resourcing and performance issues. Here attention has to be paid to alternative institutional arrangements that can satisfy the requirements of Articles 6 and 36, without necessarily having to create an ACA, especially that some see a value in addressing corruption through a broader set of institutions.

Overall, other than ACAs, there are a number of State institutions that have, or can have, anti-corruption roles and responsibilities, not as their primary function though, but rather as a part of their broader mandates. Most commonly, these include Audit Institutions, Inspectorate Generals, Ombudsmen, Public Ethics Institutions, Ministries of Public Sector Development, and Law Enforcement Authorities. Usually, none of them has the remit or capacity to take ownership of or leadership for their countries' entire anti-corruption work, but in their totality they are supposed to deliver a number of important anti-corruption functions. The exact arrangement of these institutions varies in different countries depending on a number of factors. Virtually, no two countries have the same national anti-corruption institutional arrangements, although certain trends have begun to emerge over time.

This section briefly discusses the most common forms of state institutions that may be considered by decision-maker when responding to the institutional requirements of the UNCAC, particularly Articles 6 and 36 *before* deciding whether or not to establish an ACA and if yes, in what form and shape. Other institutions may also be considered should they be integral to the delivery of anti-corruption functions in a certain state. Furthermore, although the discussion below

is primarily concerned with professional institutions within the executive and judicial branches of government, it would be useful to integrate into the decision-making process analyses on the contributions of, and the interplay with, the legislative branch.

2.4.1 Audit Institutions

Audit institutions take different forms and assume different levels of responsibility. They vary widely in their scope and subject matter, the powers and independence of the auditors and in the consequences of their reports, but Supreme Audit institutions (SAIs) often have an anti-corruption component. SAIs support a governance environment where the opportunities for corruption are limited and good governance is promoted. Their contribution to fighting corruption largely consists in monitoring the legality and value of public expenditure, the effective application of financial control and compliance arrangements, and the effectiveness of internal audit arrangements (if they exist); in increasing transparency and accountability in public finances, and in improving administrative procedures.

SAIs can help achieve the greater accountability of government institutions through a variety of techniques and auditing approaches. Traditionally, they specialise in straightforward financial accounting where they assess the accuracy and fairness of government accounting procedures and financial statements. But a number have in some countries moved beyond financial auditing to other sorts of auditing, for example, compliance and performance auditing. In compliance auditing the focus is on whether authorised funds have been spent on approved purposes through checking their compliance with relevant laws and regulations. In performance auditing the focus is really on 'value for money' which concentrates attention on analysing the operational efficiency and effectiveness of the programmes of departments and agencies. Most recently, some SAIs have introduced ethical audits which try to assess the ethical environment of a specific government institution with the aim of identifying areas of activity which are subject to higher risk of waste or corruption.

Despite these important functions and developments in techniques and approaches, it has to be recognised that SAIs are not primarily designed or operated as specialised anti-corruption institutions. They are in the business of deterring the potentially corrupt and in making corrupt transactions more difficult by ensuring adequate financial controls are in place. Audit priorities are always to foster sound financial management and controls. This requires specialised skills and at the highest level it requires forensic accounting skills and these are often not readily available in many developing countries. Traditionally, auditors tend to focus on the information and documentation available from the institution to be audited but many forms of corruption are not documented in ways accessible to routine auditing procedures and this therefore limits the ability of auditors to detect and prevent corruption when only basic SAI functions are being undertaken.

The potential for an SAI to have substantive anti-corruption roles is further restricted in civil code countries because, as INTOSAI notes, 'in the approach and structure of some SAIs, not all auditing standards apply to all aspects of their work. For example, the collegial and judicial nature of the reviews conducted by Courts of Account make aspects of their work fundamentally different from the financial and performance audits conducted by SAIs which are organised under a hierarchic system led by an Auditor-General or a Comptroller General' [INTOSAI, 2001, p28]).

2.4.2 Inspectorate Generals

The Inspectorate Generals (IGs) system is used in a number of countries – for example, Iraq, Turkey and the United States of America. It is an established independent framework through which IGs are assigned to ministries. They conduct independent investigations, audits, inspections, and special reviews of employees and programmes to detect and deter waste, fraud, abuse, and misconduct, and to promote integrity, economy, efficiency, and effectiveness in ministry operations. The approach thus involves a monitoring approach 'exercised through traditional financial compliance audits, highly individualised criminal investigations, program evaluation, or policy analysis, but it relies on others for action' (Light, 1993, p17).

The legal framework for IGs is usually contained in the specific law relating to a ministry – hence some variations in powers – and each Inspectorate is directly attached to the minister in terms of line responsibility, with safeguards to ensure operational independence, such as having protected positions. IGs manage annual work programmes, as well as reactive investigations. Work programmes are communicated with the head of the section or unit to be audited, and findings mutually agreed. Much of their work is standard audit work. It concerns efficiency and effectiveness of activities in terms of the aims and legislative context of the section or unit, the protection of assets and resources, a satisfactory accounting system, management of financial and management information, staff, areas for reform. A follow-up assessment also takes place. IGs can process cases internally if the sanctions are administrative but must refer criminal cases to the prosecutor. This requires a certain degree of knowledge on criminal investigation standards when dealing with possible evidence for criminal proceedings.

The IGs system may act collectively in terms of developing and devising a framework of operational independence, cross-cutting initiatives, protected reporting arrangements and adequate resources. In addition, and through a designated lead body, this system can develop, maintain, revise and monitor the implementation of a strategy that includes effective, coordinated anti-corruption policies across the public sector. This strategy would designate responsibilities across the public sector, and cover items such as effective practices aimed at the prevention of corruption; means for the periodic evaluation of relevant legal instruments and administrative measures with a view to determining

their adequacy to prevent and fight corruption; requiring all public bodies to produce anti-corruption action plans; collaboration with other agencies and with relevant international and regional organizations; participation in international programmes and projects aimed at the prevention of corruption; undertaking systematic reviews of progress on the strategy or action plans; and the annual publication of a report on progress, areas of risk and cross-cutting issues.

IGs are not a common institutional development, and are more likely in civil code countries. Their institutional focus, somewhere between internal audit and State Audit, means that they have more an internal investigative and compliance focus, responsible to their minister and ministries. While thoroughly versed in the working of their specific ministries and in compliance work, they lack full investigative powers and are more focused on tracking public expenditure than on corruption; they also cannot normally operate outside their ministry context.

2.4.3 Ombudsmen

All Ombudsmen offices share a common concern in improving and strengthening good governance. They hold institutions to account in a transparent way and address gaps and weaknesses in administrative procedures, practices and policies. Ombudsmen are also concerned to protect and promote human rights in general and the rights of citizens in particular. Thus ombudsmen necessarily have a stake in reducing corruption – primarily petty corruption – which impairs the abilities of citizens to exercise their rights. Ombudsmen are usually set up as independent institutions to receive and handle complaints from members of the public about alleged abuses and failures in the administrative processes of government. Many of the complaints fall into a 'grey area' between potentially criminal behaviour and socially accepted behaviour. The monitoring of complaints by Ombudsmen could potentially serve an anti-corruption purpose by identifying particular issues relating to procedures or certain offices which would require a more systematic preventative resolution by the ministry or through the body responsible for civil service. On the other hand, the fact that the Ombudsman's workload is largely generated by complaints means that most are reactive rather than proactive, they respond rather than initiate and, also in many cases, they can only make recommendations to the relevant ministries.

Allegations of corruption are, of course, one form of administrative abuse that the Ombudsman is supposed to address, and in a small number of Ombudsmen corruption is an explicit part of their responsibilities. Until 2009, the Provedor in Timor Leste was responsible for corruption investigations while the Philippines Ombudsman not only has the power to investigate but also prosecute cases of corruption, without needing to wait for a complaint from a member of the public. It also has an inspection role, mandated to 'determine the causes of inefficiency, red tape, mismanagement, fraud, and corruption in

the Government and make recommendations for their elimination and the observance of high standards of ethics and efficiency'. It has primary jurisdiction over cases that fall within the jurisdiction of the Sandiganbayan, a special appellate court responsible for criminal and civil cases involving graft and corrupt practices and such other offences committed by public officers and employees, including those in government-owned or controlled corporations. In such cases, the Ombudsman may take over, at any stage, from any other authority, the investigation responsibility by law. The Ghanaian 'Commission for Human Rights and Administrative Justice' (CHRAJ) which combines functions that are more usually divided between ACAs and Ombudsmen has had a more varied history. It has a wide ranging remit but among its responsibilities is investigating complaints of violations of 'fundamental rights and freedoms', injustice, corruption, abuse of power and unfair treatment by a public officer in exercise of his duties.

It is conceivable that institutions combining ACAs and Ombudsman functions could serve as surrogates or proxies for citizens in situations where the users and consumers of front-line services afflicted with corruption currently lack the capacity and confidence to challenge corrupt state officials and act as a deterrent to corruption. Both the Ghanaian and Philippines experience, however, illustrate that such institutions do not always operate effectively in investigating corruption since their main focus would normally be a preventative responsibility through active promotion of citizens' rights, simplifying procedures, improving complaints handling, training public officials and clarifying oversight controls. To give them a defined investigative role in addition to their normal workload may be counter-productive in organisational terms. Ombudsmen require particular skills and techniques which enable them to negotiate, conciliate, and communicate effectively in the redress of citizen grievances. It may also be the case that such skills are of less relevance in situations where potentially criminal behaviour is concerned. Indeed, it would appear that a combination between an Ombudsman and an ACA (or specialised authorities in law enforcement), could offer a more effective arrangement in that, among the complaints processed by Ombudsmen, those that *prima facie* seem to involve corruption would go to the ACA (or specialised authorities in law enforcement), while the high-volume, low-value cases received by the latter that do not merit further investigation would be transferred to the Ombudsman.

2.4.4 Public Ethics Institutions

Other countries have set up more specific institutions tasked with promoting ethics and integrity in the public sector, including conflicts of interest and sometimes asset declaration systems. This is mainly the case of countries where specialised law enforcement authorities have taken responsibility for investigating and/or prosecuting corruption.

In the United States of America, the Office of Government Ethics (OGE) was established in 1978 as a small governmental agency within the Office of Personnel

Management. It became a separate institution in 1989 and now leads efforts to prevent and resolve conflicts of interest in the public sector. OGE works with other institutions to foster high ethical standards and strengthen the public's confidence that 'the Government's business is conducted with impartiality and integrity.

In the United Kingdom, a Committee of Standards in Public Life was set up in 1995 to 'examine current concerns about standards of conduct of all holders of public office, including arrangements relating to financial and commercial activities, and make recommendations as to any changes in present arrangements which might be required to ensure the highest standards of propriety in public life'. As a standing committee it has effectively addressed both preventative policies as well as undertaken a review role. To fulfil this role and in addition to its formal inquiries, reports and research into public attitudes, the Committee devotes time throughout the year to discussing current issues and concerns relating to standards in public life. The Committee has issued not only the Seven principles of Standards in Public Life but also issued a number of thematic or sector-wide reports, including reviews of progress, following research and public hearings to which public officials and others are summoned.

In Turkey, the Council of Ethics for the Public Service (CEPS) was created in 2004 within the Prime Ministry. It established a code of ethics that has been set out in a regulation.[6] The Code governs the ethical conduct of all levels of public officials. CEPS deals with levels above that of General Manager, while ministries and other public bodies are responsible below that level. It performs the necessary investigation and research on the basis of allegations of violation of the regulation for those public officials who come within its Terms of Reference, or informs the relevant authorities of other categories of public official, or the prosecutor if the violation involves a possible criminal offence. Its only sanction – until the Constitutional Court banned its use in 2010 – was to publish in the Official Gazette the name of any public official of any proven violation. CEPS also undertakes studies to establish the ethical culture within the public sector and promotes the development of ethics training programmes. It is also authorised to examine, when necessary, the declarations of assets of public officials in relation to violations of the Code.

In all of those cases and others, the preventative role of public ethics institutions is both defined and specific, and often presupposes existing specialized investigative capacities, usually in the form of a special unit within the law enforcement authorities as well as other inspection and audit institutions. CEPS, for instance, is complemented by a specialised unit which investigates corruption under the Public Prosecutor's Office, an FIU, a Supreme Audit Board, and a strong Inspectorate-General system. Similar arrangements also exist in the other countries, and generally in most countries that choose to dedicate a State institution to public ethics.

6 Published in the Official Gazette in Turkey, dated 13 April 2005 and numbered 25785.

2.4.5 Civil Service Commissions

Civil Service Commissions (CSC) play an important role in the management of the human resources (i.e. recruitment, employment, training, performance management, compensation, career advancement and discipline) of the government. Ashour (2004) provided analysis of corruption and malpractices in the various functions/areas of public human resources management(PHRM) in Arab countries ranging from "ghost" employees, multiple salaries, undeserving benefits and favouring certain candidates in employment, training and promotions to conflict of interest, nepotism and disciplining misconduct. He analyzed the ethics management regime that could be used to guide Arab countries in building integrity-based PHRM.

CSCs plays an important role in building preventive safeguards against corrupt practices in this domain. Its role as a regulator and reformer of the PHRM system to prevent corruption, enhances transparency, strengthens the merit-based policies and the related practices and to assure integrity in the various areas of that system is key to the anti-corruption policy of the country. Civil service commissions have not yet played their appropriate role in this regard in the Arab countries. Such a role needs to be integrated within the preventive strategy and the activities of the ACA. In the final analysis, the country cannot combat corruption if the system by which public employees are managed is open and vulnerable to corruption.

2.4.6 Ministries of Public Sector Development

Corruption is widely considered to be the 'result of malfunctioning state institutions due to poor governance' (UNDP, 2008, p.6). Accordingly, preventing it would involve a set of mechanisms that are continuously evolving and are closely intertwined with complex governance issues mostly related to the work of the public sector. For this reason, many countries have developed specific approaches to deal with public sector development challenges that are not necessarily limited to corruption, but rather include other issues such as promoting efficiency in public services delivery, human resource management and regulatory quality.

A common approach in several developing countries has been to create ministerial portfolios for this purpose. The portfolio may be a mere escalation of the role of civil service commissions or it can include administrative development and reform functions. Egypt has been a pioneer among Arab countries in establishing a ministerial post for administrative development in 1975. In the 1980s and 90s similar posts, though with different names and portfolios, were created in Sudan, Morocco, Jordan, Lebanon, Kuwait, Saudi Arabia and Yemen. Their functions range from managing and upgrading the civil service and improving public services to formulating and implementing plans for administrative development and reform throughout the public sector. Over the last three decades, these ministerial portfolios have had very little impact on enhancing integrity and reducing corruption in the public sector in Arab countries. In fact and until only recently, the issue of anti-corruption has not been part of the portfolio of these ministries or posts.

Only after Arab countries started to join the UNCAC, some countries started to include the issue in the agenda of the government or to form a ministerial committee for that purpose.

In most cases where an ACA was established, the issue was totally delegated to the specialized agency. In general, the ministerial portfolio for modernizing public administration has not done much in the area of strengthening integrity and ethical practices and reducing corruption in the public sector. And, it did not make major contribution to enhancing the efficiency of government and the quality of its services. In an exceptional case, Dubai, when such improvement took place, it was due to the political will and dedication of the top leader of the Dubai Emirate. The situation after the recent political upheavals in the Arab region is mixed. So, while Tunisia has created two ministerial posts after the revolution, one for modernizing the public sector and the other for governance and anti-corruption; Egypt cancelled the ministerial post but kept the staff associated with it. In most of the Arab Spring countries, the focus has been on rebuilding the political system with less emphasis on improving or reforming the administrative system and, ironically, with much less on preventing and combating corruption.

2.4.7 Law Enforcement Authorities

Just like any other crime, the task of combating corruption is the responsibility of law enforcement authorities, including police, prosecution, courts as well as ministries of justice, interior and foreign affairs. The special nature of corruption, however, has necessitated a more specialised response, a notion that was further emphasised in the UNCAC under Article 35, which requires the 'existence of a body or bodies or persons specialized in combating corruption through law enforcement', and is discussed in more detail in section 2.3.

In developed countries, the predominant approach when setting up specialized anti-corruption law enforcement authorities is to either have specialists within the detectives department or a specialist unit within the national police or prosecutorial body dedicated to dealing with domestic corruption. For example, the Commercial Crime Branch in the Royal Canadian Mounted Police (RCMP) deals with what it calls National Interest Investigations, which concern corruption of domestic public officials, the integrity of national programmes or matters requiring special investigative expertise. Such specialist units usually deal with corruption through their own resources, but also have the critical advantage of being able to draw upon the resources of other units within the body they belong to, particularly those tasked with intelligence, surveillance or financial investigations, noting that many law enforcement authorities now have dedicated units dealing with asset confiscation and recovery.

Such countries also use specialist authorities in relation to complex cases or overseas allegations where expertise in mutual legal assistance requests is important. For

example, the Swedish National Anti-Corruption Unit (NACU) operates from the Office of the Prosecutor General. It is entirely independent from the national police and deals with all cases of bribery and corruption in Sweden as well as international cases that have a Swedish connection. The NACU's prosecutors lead all criminal investigations although the police provide the investigative resources. It runs a network within the government focusing on public institutions that are involved in areas that are traditionally risk areas for corruption. The network includes government institutions that are well-placed to detect corruption, including State Audit and the Revenue Authority, and reports cases to the Unit and in turn provides specialist support during investigations.

Spain has the Special Attorney General's Office for the Repression of Economic Offences related with Corruption (ACPO or the Fiscalía Anticorrupción) which provides a special prosecution service for economic crime and corruption cases. Although it forms part of the State prosecution authority the ACPO differs from other prosecution offices because it has support units permanently assigned to it from the prosecution authorities, the Tax Department, the General Administrative Inspectorate of the Civil Service and from the two principal police bodies in Spain, the Civil Guard and the National Police (see OECD, 2006).

The role of law enforcement authorities in anti-corruption work, however, does reflect the levels of organisational diversification and consolidation in both common law and civil code countries where a tradition of specialist units or prosecutor specialisation has led to responsibility for complex or sophisticated corruption cases, often developing from established financial and economic crime work. Such countries have also been engaged in, and supported by, formal national and regional networks and information sharing arrangements. In counties that do not have the traditions of institutional specialism or cooperation, however, it would be unlikely that specialized law enforcement authorities would be able to take on substantive anti-corruption work.

2.5 Possible Options for Implementing Articles 6 and 36 of the UNCAC

Section 1 of this study discusses the various types and functions of ACAs and some key issues associated with establishing and operating them. Section 2 explores the content of Articles 6 and 36 of the UNCAC and shows that neither requires States Parties to set up an ACA, although several countries have seen the value in doing so. It also shows that there are other State institutions that contribute to anti-corruption work and should be considered when implementing the UNCAC and reforming national anti-corruption institutional arrangements. This last part of section 2 builds on the previous discussion to address possible options for implementing Articles 6 and 36, including the strategic issue of deciding whether or not to set up an ACA, followed by an exploration of possible alternative approaches.

States can rarely create or recreate their unique institutional architecture from first principles. There are usually no alternatives to the more incremental and modest processes of institutional reform. Where deficiencies are found in current arrangements, one option has been to adapt, expand, curtail, modify and innovate within the prevailing institutional paradigm. A move to a wholly new institution such as the ACA, which is usually a reflection of the seriousness of the governance problems that cannot be addressed through existing institutions, is thus a significant decision that requires careful consideration of all the issues noted in this and the previous section.

Further, no two countries possess exactly the same institutional arrangements to tackle corruption. There may be family resemblances based on shared political or regional histories but there will still be important differences between otherwise close neighbours. Deciding whether or not to establish an ACA is a country-specific and not a regional or a global response. Similarly choosing what *type* of ACA for a particular country also brings its own challenges. For example, an independent, multi-functional ACA may well be insulated and isolated from other institutions (and that may be both a choice by the agency or a consequence of the attitudes of the other actors) which could prove to be not only useful collaborators but also stimulating competitors. No one institution can possess all the knowledge and techniques necessary to combat corruption successfully. Indeed the very attempt to become the unique repository of corruption expertise and responsibility can create problems.

On the other hand, having an ACA in place should not necessarily be seen as completed process, when attention needs to be given to reviewing and amending capacity, roles and responsibilities both in terms of changes to the external environmental and internal organisational issues, as well as in terms of the development of the anti-corruption work of other institutions and the overall inter-institutional arrangements. The challenge is to understand the dynamics of organisational development, of the relationships of existing institutions, of changes in patterns and levels of the most serious corruption risks and wider governance reforms. Of particular importance is what types and patterns of corruption need to be addressed, in what priority and to what objective, and why existing agencies either for internal control of corruption of for the external investigation of corruption have been unsuccessful or limited in their scope. The approach to implementing Articles 6 and 36 should thus address the added-value of an ACA, the consequences if one is established but fails to perform, the consequences if anti-corruption work is included within a specialist police or prosecutorial unit, and the consequences if an ACA is not established.

As noted in section 1, there is academic and practitioner literature concerning the value of an ACA. Generally, it has been argued that the advantages of a specific body may be the impetus to and ownership of anti-corruption efforts, independence from a corrupt law enforcement environment, the high degree of specialisation and expertise it

can accomplish, as well as the faster and more efficient work that a dedicated agency can achieve. On the other hand, the same literature draws attention to possible disadvantages, such as high costs, rivalries, gaps in information-sharing, isolation and the undermining of existing institutions already engaged in work against corruption.

This study does not propose specific responses to Articles 6 and 36, nor does it propose particular anti-corruption institutional arrangements to countries. Rather, it emphasises the fact that there is no 'one-size fits all' solution. The more sensible approach would begin by detailing the main anti-corruption functions needed in each country, in line with the UNCAC, and then asking a series of questions to determine the response that is most suitable for each country's context.

2.5.1 Anti-Corruption Agency or alternative institutional arrangements?

For countries without an ACA, a full evaluation should take place through a comprehensive national anti-corruption strategy which must address: the legislative framework; the reporting arrangements; the roles and responsibilities of existing institutions and their relationships; the budget provision; the planning and performance regime; prosecutorial and judicial capacity; and the political context. This means, *pace* (Huther and Shah, 2002), the general operating environment must be evaluated for structural facilitators or inhibitors to the performance of any specialised agency or to alternative arrangements between existing institutions.

Of course, the value of the development of an anti-corruption strategy would allow countries to make an evidenced decision whether to invest their resources in 'awareness' and 'prevention' (with a focus on the inspection role) through an oversight and coordinating body, or the fight against 'high-volume'-corruption (such as traffic police or license clerks) or 'high-value'-corruption (such as procurement contracts) or 'high-ranking' corruption (involving government ministers or other top-level public officials) or 'sophisticated corruption' (such as money laundering with overseas and organized crime dimensions) or a combination of all models.

In responding to Article 6, countries could begin by identifying and detailing the corruption 'prevention' and 'awareness' functions needed in each country, in line with the UNCAC, and determining whether or not an ACA would be needed to undertake these functions. The starting point is to ask what preventive functions belong to other State institutions and what do not. Then, how well are the other institutions performing these functions? If not, do these functions or a reduced range of them provide sufficient commonality or synergy for a single body? If yes, would these functions fit within those normally associated with an ACA? And if not, what is the alternative approach to undertaking these functions?

In responding to Article 36, countries could evaluate the strengths and weaknesses of their existing law enforcement authorities in terms of their ability to accomplish the expected tasks. Further, given the range of crimes within UNCAC, and with roles for FIUs, the prosecution, state audit, tax, procurement and customs authorities, as well as sharing of information, proceeds of crime and money laundering and international cooperation, countries might want to consider how far they want to embed anti-corruption activities within the existing law enforcement framework or create a separate agency. Even where there is concern over the lack of independence or lack of commitment of existing law enforcement authorities and the public concern in their work (where, for example, street corruption involving the police is a consistent issue), the traditional arguments for an autonomous agency – a 'fresh start', insulated from corruption and other undue influence, and so on – as well as the supposed disadvantages (such as taking resources from other authorities, size, and so on) – may be less important than what should be the expected expertise to deliver UNCAC-specified functions that Articles 6 and 36 implies.

If countries are considering establishing an ACA, they need to pay attention to the fact that the roles and work of a single agency may still be insufficient without two further issues being considered.

First, any such agency must work within a comprehensive national anti-corruption strategy. Of particular importance is what types and patterns of corruption need to be addressed, in what priority and to what objective, and why existing agencies either for internal control of corruption of for the external investigation of corruption in other agencies have been unsuccessful. The strategy will need to identify the added-value of an ACA, the synergy between functions, the consequences if one is established but fails to perform, and the consequences if an ACA is not established, and should reflect the domestic situation and therefore has to be tailor-made instead of being imported.

Secondly, and given the niche status of an ACA, and while there may be close cooperation and coordination between the institutions required under Articles 6 and 36, consolidating both articles, is more than likely to have a focus on law enforcement function. If this is to be the core activity, then any such ACA will require expertise in those aspects of the UNCAC dealing with specialised techniques, working with other branches of the public administration, such as tax, procurement and customs authorities, sharing of information, proceeds of crime and money laundering and international cooperation. This is a cost-intensive resource to develop and will not only require substantial institutional-to-institutional engagement but also access to such resources and a strategy that maximises their value to the work of the ACA.

In general terms, this study argues that the ability of ACAs to fight corruption depends largely on a number of specific environmental and institutional factors. Where these

are hostile or unsupportive, the ACA is likely to be isolated, vulnerable and ineffectual. In such circumstances, it will also be no more effective than are the courts, the police, audit agencies, ombudsmen or inspectors-general. This gives rise to the paradoxical conclusion that, where ACAs are most needed, international experience suggests they are least likely to be effective. Conversely, the kind of supportive conditions that enable and empower an ACA are the same conditions that support other elements of good governance.

2.5.2 Anti-Corruption Agency?

Developed countries with advanced democratic systems seem to share the belief that, because they already possess a set of regulatory and oversight bodies whose workings are mutually supportive and reinforcing and which share an understanding with the public about inappropriate official conduct, an ACA is unnecessary and superfluous. Here the issue is, if the environmental factors are unsuitable, but an ACA has been or will be established, then what measures can or should be taken to underpin or promote effectiveness? Of course, as noted above, each state would need to assess whether its anti-corruption objectives and the functional requirements of UNCAC are, or are capable of, being met by their existing array of institutions, mechanisms and procedures.

The question is whether there is or could be an institutional space which only an ACA could fill and, if established, whether or not it fills that space effectively. The initial challenge is to see how the existing parts of the institutional machinery are able to, or could, support and interact with others in a constructive and coordinated way to meet the demands of the anti-corruption agenda in terms of the added-value of the collective strengths and potential and the possible complementarities of existing organisations before actively considering the establishment of a new specialised anti-corruption body. It has to be recognised, of course, that a review or assessment may demonstrate that the existing institutions with some role in tackling corruption have such deficiencies and are so very resistant to reform, or have a fractured relationship with the citizenry that a new specialised agency is the most sensible institutional response.

The second step is to consider what sort of ACA is desirable and possible. Will it be multi-functional or more focused? Will it be responsible for ‘prevention’, ‘awareness’, ‘law enforcement’, or a permutation of those functions? What will its exact responsibilities be? How will it be structured and positioned in the country’s broader institutional landscape?

The choice should be informed by the prior assessment of the strengths, deficiencies and ‘gaps’ of the other anti-corruption machinery and by the forms, levels and risks characteristic of corruption in that country. Too often, ACAs have been created in the image of the Hong Kong ICAC not because it seems most suited to a country’s particular needs but through what might be termed ‘institutional innovation by imitation’

which is rarely successful. As discussed earlier, the Hong Kong multi-functional model dealing with 'law enforcement', 'awareness' and 'prevention' is resource intensive and was initiated within an atypical colonial context to deal with police corruption. The evidence suggests these bodies are often small, under-resourced, isolated from partner organisations and established in countries where corruption pervades the entire public sector. Their consequent ineffectiveness is only to be anticipated.

This leads to the discussion on the type of ACA, and reviewing the work of ACAs. For example, is it appropriate to invest in a well funded and staffed law enforcement based agency or is the need for research, prevention and awareness-raising more pressing? Is the ACA's objective to target senior political and administrative figures, and is it to seek custodial sentences or confiscate their illicitly obtained assets (or both)? Is the concern about street-level or routine maladministration or misconduct and, from the perspective of the aggrieved citizen, does it make a difference to the institutional remedy they seek? In Thailand, for example, in addition to the National Anti-corruption Commission (NACA), the government has established a Public Sector Anti-corruption Commission with the intention of the former concentrating on elected officials at local and national levels, and senior appointed officials, while the latter deals with appointed local and national officials up to a certain level.

As pointed out earlier, there needs to be a risk assessment to determine what the anti-corruption priorities are and whose responsibility they should be. At the same time, the next question is one of sequence in terms of institutional reform. The ACA's remit has to be established within the context of the roles and responsibilities of other agencies. If, for example, the ACA is to address complex cases involving senior figures, and only has resources to do so, then that decision can only be made if there is another institution to handle routine complaints. Finally there is the question of timing. How long and in relation to what performance criteria will governments and donors assure the necessary funding, what are the budgetary mechanisms for increasing staffing levels in relation to any expansion of work, and what are the review mechanisms under Article 5 to assess not only the progress of the ACA but also the general diminution of corruption, or perceptions of corruption?

Once an ACA is established, it is important to review both the external environmental and internal organisational issues, as well as the inter-institutional relationships, to ensure that its portfolio of functions are coherent, and that it has the capacity to deliver those functions, so that the necessary adjustments and support are made to facilitate its work. This study is aware, however, that the option of first principles rarely applies in the real world, and so we must return to the need to monitor and review ACAs, which may work in practice in imperfect environments and with unsupportive institutions, to assess what also requires attention externally to facilitate its work.

This takes us to the second set of factors, the internal organisational factors. ACAs have to identify their purpose and earn their credibility and competences. This requires ACAs to think through their core strategic focus and the management and operational processes to deliver that focus. An investigative body needs to determine its 'ceiling' in terms of targets it can hope to achieve with the resources it has, and taking account both of its operating environment and the minimum amount of political direction and obstruction. It may still be able to pursue quite senior officials and address 'street-level' corruption concerns. But there remains the danger of competition and conflict with the police or ombudsmen over lower level corruption cases.

Similarly, once established, the institutional configuration and functions of an ACA should not be assumed fixed. Periodic reviews of the work of an ACA will determine the suitability, synergy and coherence of its functions and whether or not these should be consolidated, transferred or merged. The key to a functioning ACA is its strategy, its institutional configuration and its existing capacity, as well as its relations with other concerned institutions. Of particular importance is the on-going UNCAC review mechanism. Through this countries can review and re-consider after a period of initial establishment and work, whether or not the ACA and its functions as originally envisaged and configured reflect the requirements of UNCAC, the roles and responsibilities of other institutions and the country-specific types of corruption.

2.5.3 Alternative institutional arrangements?

In case a country decides *not* to establish an ACA, the question of implementing Articles 6 and 36 of the UNCAC remains valid and a coherent response must be fashioned to address the institutional requirements of both articles. States Parties are required by the Convention to ensure the existence of adequate institutional arrangements to effectively address corruption problems and not be merely satisfied with existing institutions, unless these institutions are considered to be adequate in terms of *de jure* functional responsibilities and *de facto* operational performance, and successful in reducing the incidence, as well as the perception of corruption.

As discussed before, a number of countries may be presumed to have undergone sufficient institutional development that allows them *not* to establish an ACA, because they enjoy advanced levels of democratic consolidation and their institutions have adequate funding, a willingness to coordinate and cooperate on anti-corruption activities, and a functional independence from political interference. These circumstances may not necessarily apply to the situation in many developing countries. The dominant predominant approach in most countries where these situations apply, however, has been a tendency to rely on complementary institutional arrangements, where 'prevention' and 'awareness' are left to a broader set of institutions that are tasked with audits, inspections and others, while 'law enforcement' is assigned to specialised authorities dedicated to dealing with

corruption through law enforcement. These authorities may be specialists within the detectives department or specialist units within the national police or prosecutorial body.

In the case of such countries, the response to the implementation of Articles 6 and 36 of the UNCAC has been to reinforce the mandates, functions, and capacities of existing institutions. In some cases, new institutions where set up; however, those were not established as ACAs that have the remit to take ownership of or leadership for anti-corruption work. Instead, they were given very specific mandates to address what may have been perceived as a gap in the national anti-corruption institutional arrangements. In the Netherlands, for example, the Dutch Ministry for the Interior and Kingdom Relations' established the National Integrity Office (NIO) to help government organisations improve their integrity policies within the CAOP, which is the Netherlands' largest knowledge and service centre for the labour market and labour relations. This is intended to guarantee the independence of the NIO and to ensure it can carry out its functions with the necessary resources and autonomy. The main aim of the NIO Office is to improve the learning skills of organisations so as to enable them to shape their own ethics and integrity policies. It does that by promoting and supporting ethics and integrity policies; collecting, disseminating and exchanging of useful knowledge with all public sector institutions; and developing integrity instruments that can be used to discuss, test or improve integrity policies.

Other countries are currently revisiting their national anti-corruption institutional arrangements. In 2008, South Korea merged the Korean Independent Commission Against Corruption (KICAC) together with the Bureau of the Ombudsman, the Bureau of Administrative Appeals, and the Office of Planning and Coordination. The resulting new body is the Anti-corruption and Civil Rights Commission which essentially acts as an Article 6 body, with additional functions. It is not difficult to see that such an organisational framework could offer efficiency gains in, for example, communication, research, information technology and 'back office' functions, but it is premature to reach any judgment about possible improvements in overall operational effectiveness. Nevertheless, any country considering adding to or changing its anti-corruption institutional arrangements must assess whether current resources are optimally deployed, whether current institutions are clearly focused on areas of greatest concern, and whether the appropriate targeting of relevant skills is in place. In a number of countries, it is the inter-institutional coordination issues – such as information sharing, delineated responsibilities and joined-up working – that adds value and effectiveness to anti-corruption work.

Turkey has been a candidate for EU membership since 1987; it also has a significant corruption issue. Several assessments indicated that a number of current procedures and/or institutions are not working effectively, while developing areas of concern (such as political party funding) require a response that goes beyond existing arrangements. The answer from GRECO calls for two new or designated institutions:

- A body with the responsibility of overseeing the implementation of national anti-corruption strategies as well as proposing new strategies against corruption. Such a body should represent public institutions as well as civil society and be given the necessary level of independence in its monitoring function.
- A specialised unit with investigative powers in cases of corruption, for the sharing of information between law enforcement agencies and to provide advice to law enforcement agencies on preventive and investigative measures.

While this does not go as far as calling for a specific ACA, it does raise the question of how to improve the work of existing institutions and better coordinate what they do. In turkey, there is the Council of Ethics for Public Service (CEPS); a functional police unit, which investigates corruption under the Public Prosecutor's Office; an FIU; a Supreme Audit Board, and a strong Inspectors-General system, which has responsibility for the protection of EU finds and liaison with OLAF, the EU's anti-fraud office, as well as the coordination of the national anti-corruption strategy. The leading Inspector-General – the Prime Ministry Inspection Board (PMIB) – has taken responsibility for the work of the first of the two bodies proposed by GRECO. Thus the question has been, using the Inspectorate-General approach as the lead focus, to review the roles or potential of existing institutions or consider how they may be reconfigured, and assess the necessary legislative, procedural, staffing and resourcing issues that may work within the Turkish context.

On the other hand, there are as likely to be as many issues to address to achieve effectiveness in existing institutions, as there would to set up a new institution, whether it is an ACA, or a more targeted type of institution. Nevertheless these will be different issues and will require different solutions and provide countries with an alternative approach against which to assess the viability of such an option, and whether it would address the requirements of UNCAC, before determining the need for an ACA.

3. POSSIBLE IMPLICATIONS FOR ARAB COUNTRIES

3.1 Overview on Anti-Corruption Agencies in the Arab Region

A recent study (UNDP, 2012) that reviews and analyzes experiences of ACAs in the Arab region takes note of different types of institutions that have various anti-corruption roles and responsibilities, with some having a major focus on corruption, such as the Administrative Control Authority in Egypt. The study also shows that some specialised anti-corruption bodies did exist prior to the UNCAC, although mostly as part of a larger institutions, such as the Anti-Corruption Directorate at the General Intelligence Department in Jordan. Since 2004, however, Algeria, Iraq, Jordan, Kuwait, Morocco, the Palestinian National Authority, Saudi Arabia, Tunisia, and Yemen have established ACAs

with several examples of countries establishing national anti-corruption coordination committees and mechanisms, which in some cases included ACAs in them, such as the Joint Anti-Corruption Council in Iraq.

Only four of those ACAs have been functioning for more than five years (Iraq, Jordan, Morocco and Yemen). The Algerian ACA, established in 2006, is still without significant visible action, compared to its peers. The remaining ACAs are more recent. The Palestinian ACA was established in 2010, and the Saudi in 2011. The Tunisian ACA was established in 2011 building on the experience of the fact-finding commission that came into existence immediately after the Tunisian revolution in January of that year. The Qatari ACA was also established in 2011 and still in a preparatory phase, while the Kuwaiti ACA was established in late 2012. Finally, it is important to note that the Moroccan ACA is expected to undergo major changes due to the country's 2011 constitutional reforms which have elevated the agency to a constitutional authority and expanded its mandate. References to the Moroccan ACA are meant to describe its state before the constitutional reforms and not after.

Key driving forces behind establishing ACAs in Arab countries have varied. Mostly, however, they seem to have been motivated by the momentum generated as a result of the country's ratification of the UNCAC. Other driving forces included pressures from international institutions and the donor community, public pressure from within the country, and the impact of revolutions and transformations that have swept across the region since the beginning of 2011.

Turning to the analysis of the experiences of the four oldest ACAs in the Arab region, the Moroccan ACA seems to be mostly advisory and preventive in nature, as shown in the annex, while the other three ACAs are multi-functional with the Iraqi ACA being the strongest relatively in terms of law enforcement functions. On the other hand, the Moroccan ACA seems to be the most active on research and policy recommendations, while all four seem to be equally involved in awareness-raising work.

In terms of independence and reporting channels, the Iraqi ACA, which is the earliest existing ACA in the region, does not seem to be linked any other State authority. It can be considered to enjoy full *de jure* independence, including financial and administrative independence, deriving its mandate only from the law that established it. Although this law guarantees its structural independence and protects it from political interference, there are indicators and allegations of increased political interference in its work. This is in addition to influences causes by the challenging security situation in Iraq and persistent threats of violence against it.

The Jordanian ACA is linked to the Prime Minister, but its commissioner and board members are appointed by a Royal Decree. It is administratively and financially independent. In the past, it seemed to be constrained in handling grand corruption cases; but these constraints seems to have been overcome under its current leadership, even if in relative degrees, amidst growing public disgruntlement about the state of corruption in the country and the government's inability to adequately address it.

The Moroccan ACA, in its pre-2011 format, was linked to the Prime Minister, although its General Assembly is appointed by the King based on a complex system that attempts to guarantee representation of all key sectors from government, business, and civil society. The outgoing ACA was administratively and financially independent; however it was constrained in its resources and mandate/functions. After the recent constitutional reforms, however, the Moroccan ACA is expected to undergo serious changes, starting with it becoming a constitutional authority that is not linked to any other State authority. As a result, there are high expectations that the situation will change after the coming into effect of the various policies and laws that embody the recent constitutional reforms.

The Yemeni ACA is linked to the President of the Republic, but its chairman and members of the board are elected by the Parliament. It is administratively and financially independent; however, it is perceived to be constrained in handling grand corruption cases, and prohibited by the law to investigate officials at the level of Deputy Minister and above. The terms of its current board has been extended beyond the initial six year mandate due to the transitional period that the country is experiencing.

The four ACAs, however, are not the only actors in their respective countries when it comes to preventing and combating corruption. Tables 1 to 4, below, summarize the relationships and linkages between those ACAs and the other oversight institutions in their countries.

Iraq: Institutional Linkages between the Commission of Integrity and Other Oversight Institutions						
Supreme Anti-Corruption Coordinating Body	**Central Audit**	**Prosecutor General**	**Inspection Body(ies)**	**Tender Control Authority**	**Diwan Mathalem (The Appeals Authority)**	**Civil Society**
Joint Council for Integrity	Refers some corruption incidents to ACA No structural mechanism for joint work with the Commission	Shares role with the Commission in investigation of corruption cases when received directly	Works closely with the Commission	N/A	N/A	Collaborates with the Commission

Jordan: Institutional Linkages between the Anti-Corruption Commission and Other Oversight Institutions						
Supreme Anti-Corruption Coordinating Body	**Central Audit**	**Prosecutor General**	**Inspection Body**	**Tender Control Authority**	**Diwan Mathalem (The Appeals Authority)**	**Civil Society**
N/A	Works independently with little joint work with ACA	Performs the full function of investigation and referral to courts Partial joint work but with full powers and under the supervision of the PG	No separate body The Civil Service Commission conducts assessments and surveys of public services rendered	N/A	Refers corruption cases and exchanges information with the Commission but no joint initiatives or work	Limited collaboration or joint work

Morocco: Institutional Linkages between the Central Authority for Corruption Prevention and Other Oversight Institutions						
Supreme Anti-Corruption Coordinating Body	**Central Audit**	**Prosecutor General**	**Inspection Body**	**Tender Control Authority**	**Diwan Mathalem (The Appeals Authority)**	**Civil Society**
Various entities and sectors represented in ACA›s GA ACA is observer in anti-corruption inter-ministerial committee	Central Audit Court possesses full judicial powers No direct collaboration or joint work	Performs the investigative /prosecutor functions independently No joint work with the ACA	Financial inspection is performed by an Inspection Directorate of the Ministry of Finance No direct link with the ACA	N/A	Represented in the GA of the Authority but no joint initiatives or work	Represented in the Body/ GA of the outgoing Commission

Yemen: Institutional Linkages between the Supreme National Authority for Combating Corruption and Other Oversight Institutions						
Supreme Anti-Corruption Coordinating Body	**Central Audit**	**Prosecutor General**	**Inspection Body**	**Tender Control Authority**	**Diwan Mathalem (The Appeals Authority)**	**Civil Society**
N/A	Works independently and separately from the ACA Limited sharing of information No major joint work / initiatives	Conducts the full work of investigation and referral to the courts Has representation within the ACA to facilitate communication	N/A	A newly established Supreme Authority for Tender Control No record of practices or achievement yet	N/A	Is represented in the Council of the Authority Some collaborative work exists (e.g. educational activities)

Overall, compiled information and data shows that ACAs in the Arab countries are facing various constraints that limit their effectiveness. In many cases, they seem to operate in relative isolation. They receive less cooperation than they desire and have not been very successful in establishing integration and synergy with the institutional framework of anti-corruption in their respective countries. The political will has been gradually developing, but most observers agree that it has not been strong enough or sufficient to confront grand corruption. Anti-corruption legal and institutional frameworks require thorough revisions and more emphasis on implementation. The ACAs in Iraq and Jordan and to a lesser extent in Morocco and Yemen have been able to improve these frameworks, but much more work needs to be done in critical areas such as access to information, conflicts of interest and asset declaration regimes, and the enforcement of criminal laws against senior public officials and Politically Exposes Persons (PEPs) whenever the need arises. The experiences of ACAs in Arab countries shows that the challenge of confronting corruption is beyond the capability of anyone agency. This challenge is exacerbated even further, when the oversight institutions do not cooperate sufficiently among themselves nor with the ACA, a common problem among the countries studied. Notwithstanding the quality and representativeness of their content, national anti-corruption plans and strategies in those four countries, with the exception of Morocco, have been primarily driven by the ACAs themselves. Those ACAs, however, were not very successful in making these strategies relevant to other stakeholders in practice. Iraq can be considered to be the most advanced in this regard, although results seem to still be quite limited when compared to the magnitude of the problem.

With the exception of the Iraqi Integrity Commission, most of the ACAs suffer from shortage of resources. If measured against the magnitude and pervasiveness of corruption in their respective countries, the financial and human resources designated to the ACAs can be considered rather modest. With the limited experience of these agencies and the existing resource constraints, their achievement are most likely going to continue to be limited. These constraints also stem from the limited powers they have (vis-à-vis the magnitude of the challenge and the problem they are supposed to confront), lack of synergy with other actors, absence of strategic focus and priorities, and reliance on centralized, traditional and functional structures with no use of results-based frameworks.

3.2 Conclusions

Creating an ACA should not be seen as a first or only response by governments who have ratified UNCAC and who seek to comply with its standards. A specialised agency should only be considered once the weaknesses of existing institutional arrangements have been considered. As discussed in section 1, creating an ACA generates another set of challenges and unintended consequences. If the political judgment is made that something new has to be created, it is worth considering whether the new body should deliver which functions, and how.

This section emphasizes that all ACAs will be subject to a range of countervailing

influences and pressures and that the capacity to understand and take a risk-based perspective is central to recognising the challenges it will face, not only of the corruption it is intended to address, but also its external environment and those internal organisational issues which will either support the establishment of an ACA and inform its work, or require an alternative approach.

In terms of lessons learned from the literature on related international experience, most of the academics and practitioners seem sceptical about the added-value or effectiveness of ACAs. Experience shows that too often, they are created as a default response, without consideration of their purpose, powers and resources, often within an unsupportive environment and, with very few exceptions, have a reputation for limited effectiveness.

First, the apparent successes of Hong Kong and Singapore are increasingly seen in the literature as exceptions to the rule. In the Hong Kong case it can be argued that any state's power in tackling corruption is enhanced when it operates in non-democratic environments without a developed sense of human rights (Moran 2000). The powers of the Hong Kong ICAC are so extensive that they have given some analysts cause to question whether its existence is a potential danger in that its powers are open to abuse and it could become 'the enforcement agency of a police state' (Skidmore, 1996, p118).

Second, the governance context and operating environment play a significant part in determining the likely ability of an ACA – and other agencies – to perform their roles (see Huther and Shah, 2000). Thus Shah argues (2007) that, among the various anti-corruption reforms, anti-corruption agencies will be ineffective when governance is weak and only moderately effective when governance is good. Thus, Quah (2010) argues that 'in the hands of clean government, the ACA can be an asset…' (p51), but not in the hands of a corrupt government, which suggests that ACAs are more likely to work where corruption is not a major issue.

Third, the inherent problems of the institutional landscapes in which ACAs work, already identified by Heilbrunn (2004) and the U4 Report (Doig, Watt and Williams 2005), in terms of resources, problems with the criminal justice system and competition with other institutions would appear to apply to the establishment of new agencies. For example, USAID's assessment in 2009 of the attempts to establish the new ACA in Timor-Leste argues that:

> *'the ACC will face the same bottleneck in prosecution that the Provedor (ombudsman) experienced. No matter how well the Commission functions, it must rely on the Prosecutor General to move corruption cases forward. Several solutions for this have been proposed, including long-term secondment of*

prosecutors to the ACC and establishment of a special corruption unit within the PG. Secondment would offer greater control of the prosecution process by the ACC, but result in complicated loyalties for prosecutors working with the ACC but expecting careers in the Office of the Prosecutor General. The Prosecutor General does not appear to support this option. A special prosecution unit would avoid this issue, but would limit ACC influence on prosecutions' (USAID (2009), Corruption Assessment: Timor-Leste. Washington: MSI/USIAD. pp19-20).

Fourth, if ACAs are to focus on results and achievements, major changes need to take place in their management, organization design and accountability framework. And, a recognition should be made with regard to the factors impacting on the various levels of results. Outputs (e.g. number of cases processed out of notifications received) require much less coordination with and involvement of external entities (e.g. reform agencies and oversight institutions) than outcomes (e.g. violations committed, briberies paid, convicted cases out of referrals to the judiciary, and assets recovered) and than impact indicators (e.g. savings in the public budget, improvements in quality and accessibility of public services, enhancement in development indicators for a particular sector, region or at the national level). This is why care should be exercised in designing and assessing performance and results indicators for the ACA and for the anti-corruption policies.

Fifth, the ACA should be created and designed as an adaptive creature, with the capacity to strategize, prioritize, learn, adjust and innovate. Such capacity is commensurate with the rising complexity and innovation in corruption cases. While being a public organization, abiding by the basic rules governing such organizations, it needs to be freed from the constraints that may restrict its strategizing, flexibility, learning and innovation. The focus on results and achievement in the accountability framework of the agency should be accompanied by greater freedom to design its internal system. Treating it like any other government or oversight institution and forcing it to totally abide by their rules is negating the philosophy of management and control underlying results-based systems.

Sixth, a key ingredient for the failure, but not necessarily the success or effectiveness, is the degree of autonomy and independence of the ACA. Political or executive interference in the work of the agency undermines its effectiveness. The institutional independence stipulated in the law creating the agency should be supported by actual practice of absence of interference and immunity of its leadership and prosecutorial staff and having a separate budget and financial/ administrative system. Lack of independence restricts freedom to act and reduces effectiveness. But independence in itself, although a necessary factor for effectiveness, is not sufficient to realize it. Its absence is a sure cause for failure or weak performance.

Seventh, there have been the weaknesses of ACAs themselves, ranging from their strategic direction to their organizational competencies and management processes. Any institution undertaking specified (and specialised) functions will need to determine

its strategy, based on the enabling environment, and the roles of the other concerned institutions and its relations with them. As the OECD noted:

> *'it is crucial that the decision to set up a specialised anti-corruption body and the selection of a specific model be based on analysis and strategy. The country must first take stock of where it is, decide on where it wants to go, and finally elaborate a detailed roadmap. While these steps might seem obvious, it is surprising that many countries have established anti-corruption agencies without proper evaluation or strategy in a context where basic legal, structural and financial prerequisites were not in place' (2007, p26).*

Addressing strategic direction or issues related to the ACA's external environment will not translate into an effective institution if the internal management arrangements are not in place. Thus, it has been suggested that 'the building blocks of effective organisations including establishing conditions of service, standing orders, operating procedures, financial control systems and enabling legislation are essential pre-requisites for an ACA and are sometimes neglected when there is political or donor impatience for 'results'". (Doig et al, 2005, p37).

Nevertheless, the contrast between the literature and practice also reveals a paradox; more ACAs are being established at the same time when there is a diminishing belief in their efficacy. What seems to be in question is not only the effectiveness of ACAs but the various agendas of those who would propose and establish them. Too often it seems ACAs are a default response by donors while, to others, it appears that political leaders in developing countries have 'an incentive to create anti-corruption agencies that are hollow organisations to divert attention away from other possible reforms' (Heilbrunn, 2004 p2). In some cases setting up a new ACA can be interpreted as 'a desperate cosmetic manoeuvre to regain trust from a disenchanted electorate' (de Sousa, 2006, p17).

In terms of the advantages and disadvantages discussed in the literature on ACAs, the former very much reflect the potential or expectation; the disadvantages often reflect the learned practice. Even where ACAs have been judged successful in the past, there is now a revisionist drift. The fact that the CPIB in Singapore is embedded in the executive branch is now seen as indicative that it, at least partly, operates according to the imperatives of the Singapore regime (Meagher, 2005 p100).

The Hong Kong ICAC stands alone as a success, as a continuing example of good practice but, even here, there is a question mark over the actual financial costs involved. It may in some respects be seen as a model but it 'entails a high cost that, for many governments, is simply prohibitive' (Heilbrunn, 2004 p.14). Further, there is 'the risk of division of resources and duplication of efforts' which 'is especially important in

countries with fewer resources, less mature political systems and more powerful patronage networks' (USAID, 2006, p7). Finally, when the issues of effectiveness and cost are put aside, there is the suggestion that, to be really effective, ACAs need much greater powers yet the danger here is that 'the powers concentrated in an ACA could be used for political repression and even serve as instruments of corruption themselves' (USAID, 2006, p7)

Decisions on establishing and supporting ACAs should therefore be based on an informed understanding of the constraints and limitations of such bodies, in terms of both external environmental and internal organisational issues. If they are to be established then, like any newly-established institution, they need to be nurtured and not be subjected to the crushing weight of unrealistic expectations and mission overload. They need to learn what is possible, where their organisational strengths lie and how the lessons of ACA failure and the efforts to develop good practice can be applied to their country or region. This will need a clear strategic focus through five key requirements:

- To fulfil only those tasks appropriate to its identified functions;
- To engage only in activities in relation to those functions which can be accomplished within likely available resources;
- To use appropriate business management methods to manage the agency, its staff and resources, and to ensure that its activities are agreed and then supported through the budget and management processes;
- To understand the organisational development perspective, and the growth of its core functions and capacity through experience and practice;
- To develop relevant performance measurement criteria that give meaning and purpose to its activities in terms of impact.

Based on the findings of this Study, the challenge facing decision-makers would be setting out what ACAs are capable of doing in their countries, how they should operate and what they are able and unable to achieve. In so doing, however, attention should be given to the UNCAC, which many countries are now using as the overarching normative framework for their efforts in preventing and combating corruption.

3.3 Final Remarks on Prospects and Challenges Facing ACAs in Arab Countries

ACAs and anti-corruption initiatives in general are relatively young in the region. A good part of the challenges facing the ACAs has to do with building their capabilities, experience and strengthening their role and expanding on it. Given the political and institutional constraints facing most of the ACAs, it may be appropriate at this stage to capitalize on the mandate they already have and try to maximize their achievements within that mandate while attempting to widen that mandate in the medium term. This would require winning the support of the various stakeholders of anti-corruption in addition

to maintaining and enhancing the support of the political leadership of the country. To gain that support, they have to engage the various stakeholders in their programs and the activities and to maximize their achievements and impact. In some cases, this has to be accompanied by solving the internal governance problems that characterize these organizations (e.g. Yemen) and accelerate building their internal capabilities (e.g. Morocco).

One key challenge is to build capability in the anti-corruption institutions and the ACA in particular to quickly learn from their own experiences, achievements/successes and failures. One key ingredient for all of these to take place is to assure, reinforce and strengthen ACAs independence. Administrative and financial independence may not be sufficient. Political independence is what ACAs should seek. The experiences of these countries in building anti-corruption institutions need to benefit from the international benchmarks and experiences. ACAs and the institutional anti-corruption framework as a whole need to be adaptive and innovative. These entities are responsible for mobilizing and invigorating the anti-corruption momentum in the whole society. To succeed in this mobilization, they have to develop good in-depth understanding and diagnosis of the corruption profile and the anti-corruption forces in their countries. Being open to innovative approaches, capitalizing on their successes, learning quickly from own failures, in addition to benefiting from the international benchmarks represent key ingredients for effectiveness.

The political transformation, upheavals and changes that have been taking place in the region since the beginning of 2011 have great implications for ACAs in the Arab region. In the countries that achieved revolutionary change and are undergoing democratic and political transformation (Tunisia, Egypt, Libya and Yemen), only Yemen had an ACA. The ACA that Yemen had was not that effective in confronting the serious types of State capture, political patronage and grand corruption. This is despite the fact that all of these countries had, and are still having, serious and endemic corruption problems that have infected not only the administrative system but the political regime and the economy as a whole. Other countries that are experiencing various degrees of political uprising and tensions (Syria and Jordan) have mixed profiles. Syria has been loaded with all types of corruption over the last three decades, but the regime had not taken any steps in developing an anti-corruption framework. The revolting masses who are calling for regime change have been driven by the flagrant political and economic patronage characterizing the distribution of power and benefits in the Syrian society which are also protected and maintained by the regime and the State. Jordon has an ACA supported by an anti-corruption law, but the effectiveness of the anti-corruption framework is doubtful and has been the subject of the dissent of the demonstrating masses. The limited constitutional reforms could not stop these masses from continuing their quest for more serious confrontation of grand corruption.

The constitutional and political reform adopted by the regime in Morocco represents a unique case among the reforming but non revolutionary cases. The Kingdom adopted far reaching political, governance and anti-corruption reforms as a pre-emptive move in facing the demonstrating masses. However, the actual implementation of these reforms are yet to take place. The initiative taken by Saudi Arabia and by Algeria to establish an ACA or to implement an existing law could primarily be attributed to the waves of political changes and anti-corruption reform called for by the masses in various countries of the region. This new momentum explains the timing of such initiatives. The case of the ACA in Palestine is standing out as a promising case. It is joining the anti-corruption momentum escalated by the political changes sweeping countries of the region. But it is different than the rest of the cases in that it is backed by a forceful law and strong political will, responding to societal quest for integrity and anti-corruption.

The challenge facing the regimes that have or are undergoing major political transformation (Tunisia, Egypt, Libya, and Yemen) would be in taking serious steps in developing strategic priorities in combating and preventing corruption and in building the anti-corruption institutions and the related framework. Rebuilding the political institutions may constitute the immediate challenge. But the next step should be in building the legal framework of anti-corruption and strengthening its enforcement while reforming the oversight institutions, anti-corruption strategy and the ACA that can do preventive and combating/law enforcement functions. The world is full of experiences and benchmarks that can constitute knowledge resources for these countries in the design and formulation of the ACAs and the anti-corruption strategies and frameworks.

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Annex: Functions of Selected ACAs in Arab Countries				
Functions / Country	Prevention	Law Enforcement	Awareness	Cross Cutting Coordination
Iraq	• Prepares the national combating strategy • Proposes anti-corruption policy/ initiatives • Diagnoses institutional gaps • Proposes policy and legal reform initiatives • Exercises pressure through corruption surveys • Conducts regular citizen surveys on corruption in various sectors • Conducts institutional and legal research	• Investigations • Receives and processes corruption notifications • Refers corruption cases to the court	• Conducts campaigns, conferences/ • symposia and workshops to raise awareness • Issues various periodicals and publications	• Plays a leading role in coordinating and monitoring strategy implementation
Jordan	• Prepares national strategy • Role in diagnosing reform gaps • Generic responsibility to undertake preventive reform proposals • Limited research activities • Citizen surveys on corruption	• Shares investigative role in the corruption notifications it receives • Receives and processes corruption notifications • Full investigations are conducted through representatives of the Prosecutor General • Cannot refer cases directly to the courts	• Conducts symposia and workshops • No periodicals and limited publications due a secrecy policy in managing the Commission's affairs	• Limited role in coordinating and monitoring strategy implementation

Annex: Functions of Selected ACAs in Arab Countries				
Functions / Country	Prevention	Law Enforcement	Awareness	Cross Cutting Coordination
Morocco	• Proposes policy/ reform initiatives • No reference to the national combating strategy or plan Monitors implementation of proposed policies/ reforms • Diagnoses institutional and legal gaps • No particular powers exerted on the government sectors • Conducts legal and institutional assessment • Outsources sectoral assessment and diagnostic studies	• Receives complaints / appeals but refers them to the appropriate bodies • No investigative or judicial powers	• Limited activities in awareness raising • No periodicals or publications except the Annual Report	• No reference to a leading/ coordinative role though the composition of the General Assembly of the Authority could facilitate that
Yemen	• Prepares national strategy • Proposes policy/ reform initiatives • Limited role in diagnosing reform gaps • Limited role in proposing preventive/ reform initiatives • Limited research activities • No citizen surveys on corruption	• Shares investigative role with the Prosecutor General in the corruption notifications it receives • Receives and processes corruption notifications • Full investigations are conducted through representatives of the Prosecutor General • Cannot refer cases directly to the courts	• Conducts symposia and workshops • No periodicals or publications except the National Anti-Corruption Strategy	• Limited role in coordinating and monitoring strategy implementation