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# Combating corruption capably

## An assessment framework for parliament's interaction with anti-corruption agencies

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November 2020

Cover photograph by Franklin De Vrieze

*Photographs of bridges over the River Thames, London, appear throughout the document as symbols of the bridge between parliaments and anti-corruption agencies.*

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The views expressed in the paper are those of the authors, and not necessarily those of or endorsed by the institutions mentioned in the paper or the UK Government, which does not accept responsibility for such views or information or for any reliance placed on them.



## **About Westminster Foundation for Democracy**

Westminster Foundation for Democracy (WFD) is the UK public body dedicated to supporting democracy around the world.

Operating directly in over 40 countries, WFD works with parliaments, political parties, and civil society groups as well as on elections to help make countries' political systems fairer, more inclusive and accountable.

WFD experts, both in-house and associates, develop tools, guides and comparative studies on democracy and governance issues.

# Table of contents

|  |    |
|--|----|
| Foreword .....   | 5  |
| Executive summary .....  | 6  |
| Introduction .....   | 7  |
| 2. Types of anti-corruption agencies .....                                     | 11 |
| 3. Outline of the assessment framework .....                                   | 13 |
| 4. Explanation of the instruments and indicators .....                         | 18 |
| 4.1 Establishing the legal framework and mandate of the ACA.....               | 18 |
| 4.2 Selection, appointment and removal of the leadership of the ACA .....      | 20 |
| 4.3 Allocating or controlling resources allocated to the ACA.....              | 24 |
| 4.4 Consideration of and follow up to annual and other reports of the ACA..... | 28 |
| 4.5 Cooperation with the ACA .....   | 31 |
| 5. How to use this assessment framework .....                                  | 33 |
| Annex 1: Scorecard.....  | 35 |
| Annex 2: Bibliography.....   | 37 |
| Annex 3: About the authors .....   | 40 |

## Table of boxes

|  |    |
|--|----|
| Box 1 - Anti-Corruption Commission of the Maldives established by the Constitution .....     | 19 |
| Box 2 - Legal provisions on independence of ACAs in Serbia and Indonesia .....               | 20 |
| Box 3 - Examples of different parliaments' roles in appointing ACAs' leadership .....        | 21 |
| Box 4 - Requirements for the Chairperson of National Accountability Bureau of Pakistan ..... | 22 |
| Box 5 - The possibility of reappointment to an ACA's leadership .....                        | 23 |
| Box 6 - Authority of Montenegro's ACA to prepare its own annual budget .....                 | 25 |
| Box 7 - Requirements on the annual report of the ACA of Ukraine (NABU) .....                 | 29 |
| Box 8 - Follow up procedure for annual report of the ACA of Serbia .....                     | 30 |
| Box 9 - Designation of parliamentary committee for the ACA in the Maldives .....             | 31 |

## Foreword

When the UK government published its Anti-Corruption Strategy 2017 to 2022, global corruption was recognised as having far-reaching effects, including prolonging extreme poverty, reducing economic activity, growth, trade and investment, and threatening international security. The World Bank's analysis reinforces this, and there is no doubt that corruption is corrosive in many ways.

For Westminster Foundation for Democracy (WFD), as an organisation that focuses on democratic governance, corruption is also of critical concern because it undermines democracy in a visceral way. For the public, the sense of unfairness that is inevitably generated by corruption completely undermines what should be the social contract between those contributing to society and those in public leadership positions. Corruption erodes trust in government and leads the poor, the excluded and the vulnerable to a sense of desperation that those in power take decisions on the basis of private interests instead of public ones. This is cause for concern across the globe, but particularly in contexts of fragility and violence, as corruption fuels and perpetuates the inequalities and discontent that lead to extremism and conflict.

Through its country programmes, WFD has learned that effective democratic governance helps to combat corruption by creating inclusive, responsive and accountable political processes to efficiently and effectively deliver social services to everyone. Tackling corruption is not easy but in partnership with the Foreign, Commonwealth and Development Office, WFD intends to continue working with parliaments, political parties and independent oversight institutions to strengthen systems of accountability which challenge the incentives and mechanisms of corruption.

This publication on parliament's interaction with anti-corruption agencies offers a much-needed conceptual framework to understand, analyse and strengthen accountability systems, while taking into account the national context and governance systems of parliaments and anti-corruption agencies.

Since the 2016 Anti-Corruption Summit, the UK has positioned itself as a global centre of excellence in many areas of tackling corruption, including working through NGOs, academic researchers, business specialists, legal experts, journalists, and university courses. Through its knowledge products and country programmes, WFD intends to continue contributing to the global efforts in combatting corruption.



**Anthony Smith,**  
**Chief Executive Officer**  
**Westminster Foundation for Democracy**

## Executive summary

Today, there exist more than 150 specialised anti-corruption agencies (ACAs). However, the creation of such institutions is not a panacea to the scourge of corruption. In some instances, ACAs have been a disappointment and their effectiveness has been questioned.

This publication is a response to this disappointment. It provides one avenue (among others, undoubtedly) to remedy. Its purpose is to highlight the constructive role of parliaments in overcoming the challenges ACAs often face. It provides an insight into parliaments' role in contributing to combatting corruption by exercising their legislative and oversight role in support of the effectiveness of ACAs. To ensure that parliament's relationship with ACAs is constructive for anti-corruption efforts, that relationship needs to be clearly defined in a way which is measurable. That is the aim of this publication.

While there is a rich body of literature on parliaments and parliamentary development, and an increasing number of research outputs on ACAs, surprisingly little has been written on the relations between these two actors. Given that ACAs should be independent, particularly of the government of the day, it is a country's parliament that holds responsibility to provide them with a strong mandate, guarantees of independence, security of tenure, and to hold them accountable for their activities.

In this publication, we concentrate on the aspects of the relationship that can illuminate whether a parliament performs these responsibilities in a proper manner. We have developed a framework for assessing parliament's relationship to ACAs that is based on five criteria:

- (1) parliament's role in establishing the legal framework and mandate of the ACA;
- (2) parliament's role in the selection, appointments and removal of the leadership of the ACA;
- (3) parliament's role regarding resources allocated to the ACA;
- (4) parliament's consideration of and follow up to annual and other reports of the ACA;
- (5) parliament's policy and awareness-raising cooperation with the ACA.

These five criteria (instruments) are then applied using 26 indicators, creating a comprehensive framework to understand the relationship between parliaments and ACAs, both theoretically and in practice. Furthermore, this assessment framework seeks to identify a way that optimises the equilibrium between independence and accountability because essential points of contact between parliaments and ACAs include elements of both of these functions.

This assessment framework may be useful to researchers and parliamentary assistance and international development programmes to: (1) review parliament's relationship with anti-corruption agencies; (2) identify the opportunities for policy advice and the provision of technical support to parliaments; and (3) to support the establishment of effective and independent ACA frameworks. As with other similar assessment exercises, it also serves to assist in the establishment of baseline and key benchmarks, taking into account the specific local context. Informal practices and customs elude any formal assessment framework.

Thus, when applying this framework, one should contextualise their assessment within the wider political, cultural, social and legal processes, and the stage of democratic development of a given country.

# 1. Introduction

The 2030 Agenda for Sustainable Development recognises the need to build peaceful, just and inclusive societies that provide equal access to justice and that are based on respect for human rights, on effective rule of law and good governance at all levels and on transparent, effective and accountable institutions. Corruption, poor governance and illicit financial flows are all specifically highlighted in the 2030 Agenda as threats to achieving those critical development aims.

Any thought-through anti-corruption reform strategy requires a long-term vision and a clear understanding that fundamental change can take place. One crucial element of an anti-corruption strategy is to decide on the institutional models for fighting corruption and on the policies and capacity development efforts that will allow these institutions to effectively play their role.

Further, no institution will be successful in combatting corruption without the existence of an enabling governance framework as well as a coherent and functioning national integrity system. This includes the judiciary, police, audit institution, ombudsperson, police, and so on. Of particular importance is the relationship between the institution(s) charged with combatting corruption and the prosecution and judiciary. They are essential for corruption cases to be brought to court and tried. Thus, if attention is not paid to strengthening the capacity of the prosecutors and the courts, efforts to combat corruption are likely to be a failure.

## **Role of parliament in combatting corruption**

Parliaments have an additional important role to play in combatting corruption.

- Parliaments can enact legislation to regulate campaign and party financing, tackle corruption and money laundering, ensure the protection of whistle blowers, and enhance transparency.
- Parliaments can conduct corruption proofing of significant bills, as a new preventive tool.
- Parliaments can establish codes of conduct and ethics to guide their members on their conduct, to explain the appropriate legislative behaviour and to establish sanctions for breaches of the codes.
- Parliaments can contribute to curbing corruption by effectively performing their oversight role.
- Also, parliaments can establish a functioning relationship with independent oversight institutions which have a role in anti-corruption efforts.

One of the key functions of parliament is oversight of the executive branch, conducted as part of the system of checks and balances. However, it is recognised that in practice, parliament is often unable to dedicate sufficient parliamentary time and resources to ensure accountability across the wide range of activities of government departments and other public sector bodies. Thus, a substantial part of such oversight is conducted by specialised independent scrutiny bodies.

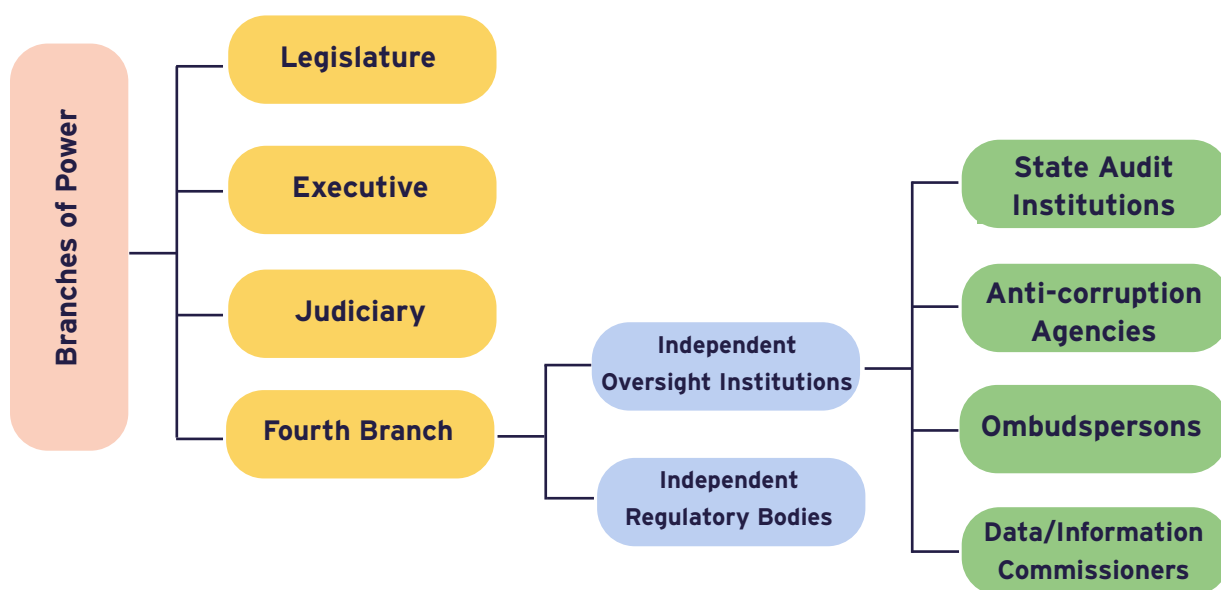
## **Role of independent oversight institutions**

Those independent oversight institutions or watchdog institutions exercise oversight of the executive and public administration in a different way that is typically more specialised and systematic, in comparison with parliamentary oversight. MPs conduct scrutiny on policies at specific times and often in a more generic way, whereas independent oversight institutions do so continuously, with specialised staff and with an explicit mandate based in legislation.

In the UK Hansard Society's report, Parliament is depicted as presiding over and supervising 'a national framework of accountability that extends beyond Westminster, comprising other independent agencies'.<sup>1</sup> Parliament has a specific relationship with the 'integrity agencies', which play a crucial role in the establishment and protection integrity systems such as national audit offices, the ombudsperson institutions, or anti-corruption agencies (ACAs).

The establishment of an ACA is often part of a country's strategy on anti-corruption or institutional integrity. It can be also connected with a wider notion of evolution of the so-called fourth branch of power, including independent oversight and regulatory bodies (Figure 1).

Figure 1: Branches of Power



### The Anti-corruption Agency as pillar of the national integrity system

An independent and well-functioning anti-corruption body is a fundamental pillar of the national integrity system of any country committed to preventing corruption. This is enshrined in the United Nations Convention against Corruption (UNCAC) of 2003, which states that an independent body or bodies within a national governance system are required to promote and enforce anti-corruption policies and practices.

Although anti-corruption bodies existed in different jurisdictions prior to the adoption of the UNCAC, there has been a noticeable proliferation of ACAs around the world in the past two decades, signifying the important role these bodies play in the prevention and control of corruption. Today, there are more than 150 anti-corruption bodies around the world that could be classified as specialised ACAs performing the functions identified in the Convention.<sup>2</sup>

1. Hansard Society, *Report of the Commission on Parliamentary Scrutiny: The Challenge for Parliament - Making Government Accountable*, London 2001.

2. UNODC (2020) Colombo Commentary on the Jakarta Statement on Principles for Anti-Corruption Agencies, Vienna, p. 1.



However, the creation of such an institution is not a panacea to the scourge of corruption. While in some cases the ACAs have been very effective,<sup>3</sup> in many instances ACAs have been a disappointment and their effectiveness has been questioned. This publication is a response to this disappointment. It provides one avenue (among others, undoubtedly) to remedy. Its purpose is to highlight the constructive role of parliaments in overcoming the challenges ACAs often face. It provides an insight into parliaments' role in combatting corruption by exercising their legislative and oversight role in support of the effectiveness of ACAs. To ensure that parliament's relationship with ACAs is constructive for the anti-corruption efforts, that relationship needs to be clearly defined in a way which is measurable. That is the aim of this publication.

Ian Temby, first Commissioner of the Independent Commission Against Corruption (ICAC) in the Australian state of New South Wales, drew attention to parliament's 'parenting role' towards the integrity agencies as they are 'bound to cause displeasure from time to time':

'there will ... be awkwardness caused because an important function of government, whatever it may be, is disclosed as being inadequately performed. It is the need for that demonstration to occur which imposes the requirement of independence. Only a non-partisan body can be authoritative and will enjoy public confidence. Periods of disharmony between government and independent officers are, accordingly, inevitable. If they were never encountered, the only available conclusion would be that the independent officer was not doing his or her job properly. The fact of that disharmony, the inevitability of it occurring from time to time, of course brings one to Parliament. It is Parliament that creates all of these bodies and it is Parliament which must look after them.'<sup>4</sup>

However, in some countries, ACAs are more oriented towards the executive branch, particularly in presidential systems. That is most usually the case with those ACAs mandated with a law enforcement function. In those cases, the leadership of the ACA is sometimes appointed by the President, who holds them accountable as well.

The work of an ACA is by no means easy or straightforward, nor are there firmly established global standards which ACAs must adhere to.<sup>5</sup> In fact, measuring the effectiveness of independent oversight bodies is notoriously challenging, as their performance is very much dependent on the performance of other institutional actors. In the absence of recognised benchmarks, the performance and effectiveness of an ACA are often informally gauged by the courage, commitment and determination with which it discharges its functions, often in complex socio-political environments.

However, while this paper touches upon some elements important for the assessment of the performance and effectiveness of an ACA, this question is not focused on here. In contrast to measuring the relationship between a parliament and ACAs, the topic of ACA performance assessment is dealt with elsewhere.<sup>6</sup>

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3. Examples of successful independent anti-corruption agencies are the Hong Kong Independent Commission Against Corruption (ICAC), Singapore's Corrupt Practices Investigations Bureau (CPIB), Botswana's Directorate for Corruption and Economic Crime (DCEC), New South Wales' Independent Commission Against Corruption (ICAC), Romania's National Anti-corruption Directorate (NAD), and Croatia's Office for the Suppression of Corruption and Organized Crime (USKOK).

4. Wettenhall, Roger (2012) Integrity Agencies: The Significance of the Parliamentary Relationship, *Policy Studies*, 33:1, 2012, 69-70.

5. There are some guidelines, such as Jakarta Statement on Principles for Anti-Corruption Agencies.

6. For more on how to evaluate anti-corruption agencies, see: Jesper Johnsen, Hannes Hechler, Luís De Sousa and Harald Mathisen, *How to Monitor and Evaluate Anti-Corruption Agencies: Guidelines for Agencies, Donors, and Evaluators*, Chr. Michelsen Institute, 2011;

## Parliament's relationship to an ACA

Given that ACAs must be independent, particularly of the government of the day, it is the role of a country's legislature to provide them with a strong mandate, guarantees of independence, security of tenure, and to hold them accountable for their activities. In this study, we concentrate on parliament's relationship to independent anti-corruption agencies, and not to different government (executive) bodies with anti-corruption functions.

This paper is concentrated on a parliament's relationship to an ACA, which can be seen as an important precondition for the latter to be effective. We focus on the parliament's relationship to ACAs, because while there is a rich body of literature on parliaments per se, and an increasing number of research outputs on ACAs, surprisingly little has been written on the relations between these two actors. Recently, WFD published a study in which we presented an initial assessment framework for the study of parliament's relationship to anti-corruption agencies, with case studies on Lithuania, Ukraine and Serbia.<sup>7</sup>

With this publication, we aim to further develop an assessment framework by providing a comprehensive set of instruments and indicators that can be used in different institutional contexts. The framework is designed to be used as a toolkit for both scholarly and practitioner communities. We hope it will be particularly useful to parliaments, ACAs, researchers and parliamentary assistance programmes on at least two levels: (1) to review parliaments' relationship with the anti-corruption agencies; and (2) to identify the opportunities for policy advice and technical support to parliament.



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Transparency International Bangladesh, Strengthening Anti-Corruption Agencies in Asia Pacific, 2017, [https://www.transparency.org/whatwedo/publication/strengthening\\_anti\\_corruption\\_agencies\\_in\\_asia\\_pacific](https://www.transparency.org/whatwedo/publication/strengthening_anti_corruption_agencies_in_asia_pacific)

7. Franklin De Vrieze and Luka Glušac, *Parliament's relationship to anti-corruption agencies: Evidence from Lithuania, Ukraine and Serbia*, WFD, 2020, <https://www.wfd.org/2020/07/10/report-parliaments-relationship-to-anti-corruption-agencies-evidence-from-lithuania-ukraine-and-serbia/>

## 2. Types of anti-corruption agencies

While there are different types of categorisations of ACAs,<sup>8</sup> for the purpose of this paper we adopt the differentiation of ACAs into three groups based upon their mandate, as proposed by the Organization for Economic Co-operation and Development (OECD): 1) multi-purpose agencies (with law enforcement powers); 2) law enforcement-type institutions; and 3) prevention, policy, and coordination institutions.<sup>9</sup>

Multi-purpose agencies combine law enforcement powers with preventive functions. They also will often provide functions of policy advice to the government or to the president (or head of state). Multi-purpose agencies are typically considered the most effective model for countries affected by corruption that is spread and entrenched in the public administration as well as in the judiciary and law enforcement institutions. It requires establishing a new, independent multi-task agency instead of co-opting departments from existing institutions. Examples of multi-purpose agencies can be found in, for instance, Latvia and Lithuania.<sup>10</sup>

ACAs as law enforcement-type institutions are specialised agencies with prosecutorial authority in specific cases. Sometimes they may be specialised units for investigation and/or prosecution of corruption cases. A first example is the Romanian National Anti-corruption Directorate (NAD), which is a structure with a legal personality that exists within the framework of the Prosecutor's Office attached to the High Court of Cassation and Justice. The NAD is led by a Chief Prosecutor whose independence is guaranteed by law. A second example is the Croatian Office for the Suppression of Corruption and Organized Crime (USKOK). It is a prosecutorial service; its procedures and regulations are similar to those of the other prosecutors' offices. The Ministry of Justice issues the internal rules and approves the personnel schemes of the Office. The Head of the USKOK is appointed by the Chief Public Prosecutor, after obtaining the opinion of the Minister of Justice and of the panel of national Public Prosecutors. The interaction with parliament regarding this type of ACA is very limited.

The third group of ACAs are the prevention, policy, and coordination institutions. This category of agencies is very diverse. One can distinguish between two sub-categories. First, there are the agencies whose work focuses on defining strategic objectives, priorities and anti-corruption measures, and the coordination of the governmental action against corruption. Examples can be found in Armenia and Montenegro. The main challenge to this type is that they have no independence from the government; and they are often mere advisory bodies with no policymaking or implementation functions. Second, there are agencies that, in addition to the general task of corruption prevention, are also responsible for some operational activities related to monitoring the application of public service regulations. Examples can be found in Azerbaijan, Slovenia and North Macedonia.

The Parliament of Azerbaijan appoints one third of the members of the Commission on Combatting Corruption and receives the Commission's annual report, as do the President and the Supreme Court. In Slovenia, the Commission on Corruption Prevention is an independent agency accountable

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8. See for instance: John R. Heilbrunn, *Anti-Corruption Commissions: Panacea or Real Medicine to Fight Corruption*, World Bank Institute, 2004; Jon S.T. Quah, *Anti-Corruption Agencies in Four Asian Countries: A Comparative Analysis*, *International Public Management Review*, 8:2, 2007, 73-96.

9. Organisation for Economic Co-operation and Development, *Specialized Anti-Corruption Institutions: Review of Models*, OECD Anti-Corruption Network for Eastern Europe and Central Asia, 2008, 13.

10. Dan Dionisie, Francesco Checchi, *Corruption and Anti-Corruption Agencies in Eastern Europe and the CIS: a Practitioners' Experience*, <http://www.arabacinet.org/files/activities/Pres-Session6-Checchi-30072008-e.pdf>

to Parliament. It assesses the effectiveness of anti-corruption regulations, is responsible for the enforcement of the Code of Conduct for Public Officials and deals with control of the financial assets of Slovenian functionaries.

According to the OECD, independent, multi-purpose ACAs of the kind established in Latvia and Lithuania have a better chance to represent a solid anchor for meaningful anti-corruption activities and may be better able to withstand the inherent political pressure. However, the creation of any new institution has to be considered in the specific context of each country, and this 'Baltic' model has not emerged as the dominant model. The main alternative models are the specialised law enforcement agencies, and the corruption prevention agencies. They tend to be more vulnerable to political pressure or to the instrumentalisation of the anti-corruption fight for political ends.



### 3. Outline of the assessment framework

While independence from the executive is crucial for ACAs being able to exercise their function, at the same time, they do not function above the law and may need to be accountable. So, it is important to establish arrangements for checking that these institutions perform their allotted tasks satisfactorily. This directs attention to the importance of the parliamentary role, as the executive government cannot hold accountable institutions responsible for oversight over themselves. To establish a workable form of accountability while safeguarding their independence from the executive, the institutions' accountability is directed towards parliament.<sup>11</sup>

#### Equilibrium between independence and accountability

Taking that into account, we aim to provide for the assessment framework that which would incorporate the necessary level of independence granted to ACAs, as well as the accountability demanded from ACAs. In other words, this assessment framework is built around the central argument that it is parliament's responsibility to make sure that ACAs' decisions and key concerns raised are properly followed up, and to define and secure both normative and financial preconditions for ACAs' work. This arguably include ensuring the conducive context for their success; that is, ensuring other parts of the state system are not effectively frustrating its work.

This assessment framework aims to identify a way that optimises the equilibrium between independence and accountability<sup>12</sup> because essential points of contact between parliaments and ACAs include elements of both independence and accountability.

The framework is based on a 2019 WFD-published study on the dimensions and indicators of independence and accountability of independent oversight institutions,<sup>13</sup> as well as on existing literature exploring the relationship of parliaments with types of independent agencies, such as the ombudsperson.<sup>14</sup>

The assessment framework is a practice-oriented document, rooted in international and comparative standards, including the Jakarta Statement on Principles for Anti-Corruption Agencies.<sup>15</sup> The framework is also in line with the Colombo Commentary on the Jakarta Statement (2020), which was developed through a participatory process in which ACAs themselves were encouraged to identify good practices and key lessons.

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11. See more in: Franklin De Vrieze, *Independent and regulatory agencies in Moldova and their interaction with parliament*, UNDP Moldova, 2011, 166.

12. Anthony Staddon, *Holding the Executive to Account? The Accountability Function of the UK Parliament*, University of Westminster, 2007, 47, <http://citeseerx.ist.psu.edu/viewdoc/summary?doi=10.1.1.500.2890>

13. Franklin De Vrieze, *Independent Oversight Institutions and Regulatory Agencies and their Relationship to Parliament: Outline of Assessment Framework*, WFD, 2019, [https://www.wfd.org/wp-content/uploads/2019/02/WEB\\_INDEPENDENT-OVERSIGHT-INS.pdf](https://www.wfd.org/wp-content/uploads/2019/02/WEB_INDEPENDENT-OVERSIGHT-INS.pdf)

14. Luka Glušac, *Assessing the Relationship between Parliament and Ombudsman: Evidence from Serbia (2007-2016)*, *The International Journal of Human Rights*, 26:4, 2019, 531-554, <https://doi.org/10.1080/13642987.2018.1513400>

15. UNODC, *Jakarta Statement on Principles for Anti-Corruption Agencies*, November 26-27, 2012, [https://www.unodc.org/documents/corruption/WG-Prevention/Art\\_6\\_Preventive\\_anti-corruption\\_bodies/JAKARTA\\_STATEMENT\\_en.pdf](https://www.unodc.org/documents/corruption/WG-Prevention/Art_6_Preventive_anti-corruption_bodies/JAKARTA_STATEMENT_en.pdf)

## Five criteria

In this framework, we concentrate on the issues that can show whether the parliament performs its responsibilities as regards to the functioning of the ACA in a proper manner, by assessing parliament's relationship to ACAs through five criteria:

- (1) parliament's role in establishing the legal framework and mandate of the ACA;
- (2) parliament's role in the selection, appointments and removal of the leadership of the ACA;
- (3) parliament's role regarding resources allocated to the ACA;
- (4) parliament's consideration of and follow-up to annual and other reports of the ACA;
- (5) parliament's cooperation with the ACA.

Under the first criterion, we consider that an ACA has to be established primarily by parliament-approved legislation that guarantees: its independence, a clear and strong mandate, the strength of institutional objectives, and a clear regulation of its relations with other state and public authorities.

As in any organisation, leadership plays a crucial role in the success of an ACA. Leaders must not only assume the traditional roles of managers and public spokespersons of their institutions and develop constructive and professional relationships with the institutions over which they exercise oversight, but also maintain the confidence of citizens that their rights and interests are being protected. Therefore, the head of the ACA needs to be selected according to procedures which are strengthening - to the highest possible extent - the authority, impartiality, independence and legitimacy of the ACA. Hence, in the second criterion, we include: the meritocratic and timely selection of the head of the institution and board members; parliament's role in the nomination, confirmation or appointment process of the head of agency or board members; fixed terms in office and clear provisions on the possibility for renewal; and clear and well-regulated grounds for removal from office.<sup>16</sup>

The third criterion analyses the role of parliament in allocating resources for an ACA's operations that are sufficient for it to exercise its functions, as well in making sure that resources are used properly.

Under the fourth criterion, we cover reporting related issues, which are an important part of the accountability of the ACA towards the parliament, but they also serve to inform the parliament and the general public about the ACA's work and key developments in anti-corruption efforts.

These four criteria are the most substantive and are well recognised in academic literature as key features of the relationship between parliaments and independent oversight institutions. The parliament must meet these four criteria to fulfil its role as the protector of the independence of the ACA and the holder of its accountability. In other words, if the parliament fails to develop predictable, consistent, and independence-supporting conduct towards the ACA, it hampers the ACA in the exercising of its mandate.<sup>17</sup>

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16. For more on appointment and removal procedures, see: Sofie Arjon Schütte, *The Fish's Head: Appointment and Removal Procedures for Anti-Corruption Agency Leadership*, Chr. Michelsen Institute, 2015.

17. Compare: Luka Glušac, *Assessing the Relationship between Parliament and Ombudsman: Evidence from Serbia (2007-2016)*, *The International Journal of Human Rights*, 23:4, 2019, 538.

In addition, we include the fifth criterion to assess the parliament's cooperation with the ACAs on policy and awareness-raising issues. It can be understood as an additional one, because it remains almost obsolete in a situation where the four essential criteria are not fulfilled.

These five criteria (instruments) together put in place a comprehensive framework to understand the relationship between parliaments and ACAs, both de jure and de facto.

### **Indicators and scoring**

These five criteria are divided into 26 indicators (table 1). This assessment framework considers similarities and differences between three main ACA models, as recognised in the literature; namely, multi-purpose, law enforcement, and prevention and policy. We differentiate three levels of parliament's role depending on the type of ACA and considering each instrument and indicator: lead role, oversight role and weak or no role. As we are focusing on the aspects of parliament's relations to ACAs that indeed call for a strong parliamentary engagement, an ideal scoring for any indicator is never 'weak/no role'. This weak scoring is included to serve as a red flag when applying this assessment framework.

These three different roles should indicate the level of involvement of the parliament and should serve to assess whether, in practice, parliament fulfils its role, and to what degree. That should help determining whether parliament should, perhaps, do more or be more careful in exercising its own functions.

In order to create an assessment framework that could be applied to different institutional designs and national contexts, we have produced a scoring for each indicator between high (score 3), medium (score 2) or low (score 1). When applying the scoring to specific institutions in-country (see the scorecard in the annex), the assessment framework may be useful to calculate the overall baseline for the quality and quantity of parliament's relationship to ACAs, as well as to reveal an evolving trend over multiple years.

Further guidance on using the assessment framework can be found in the last chapter of the publication.

The publication of this assessment framework is part of the WFD research project on parliament's interaction with anti-corruption agencies.

So far, it has resulted in two comparative studies:

- De Vrieze, Franklin and Glušac, Luka. [Parliament's relationship to anti-corruption agencies. Evidence from Lithuania, Ukraine and Serbia](#), July 2020, WFD, 45pp.
- De Vrieze, Franklin and Glušac, Luka. *It's Complicated! Parliament's relationship to anti-corruption agencies in Indonesia, Pakistan, and the Maldives*, (forthcoming, January 2021), WFD, 60pp.

**Table 1 - Assessment framework for parliament's relationship to anti-corruption agencies**

| Assessment framework for parliament's relationship to anti-corruption agencies |                    |  | Role of parliament, depending on the type of the ACA |                |              |                 |                |              |                       |                |              |
|--|--------------------|--|--|----------------|--------------|-----------------|----------------|--------------|-----------------------|----------------|--------------|
|  |                    |  | Multi-purpose  |                |              | Law enforcement |                |              | Policy and prevention |                |              |
|  | Instruments        | Indicators   | Lead role  | Oversight role | Weak/no role | Lead role       | Oversight role | Weak/no role | Lead role             | Oversight role | Weak/no role |
| 1.1  | 1. Legal framework | Secure legal foundation  | x  |                |              | x               |                |              | x                     |                |              |
| 1.2  |                    | Clarity of mandate and strength of institutional objectives          | x  |                |              | x               |                |              | x                     |                |              |
| 1.3  |                    | Legal guarantees of institutional independence                       | x  |                |              | x               |                |              | x                     |                |              |
| 1.4  |                    | Independent functioning in practice                                  |  | x              |              |                 | x              |              |                       | x              |              |
| 2.1  | 2. Leadership      | Nomination, confirmation, or appointment process of ACA's leadership | x  |                |              |                 | x              |              | x                     |                |              |
| 2.2  |                    | Merit-based, competitive, and timely selection of ACA's leadership   | x  |                |              |                 | x              |              | x                     |                |              |
| 2.3  |                    | Collegial decision making  |  | x              |              |                 | x              |              |                       | x              |              |
| 2.4  |                    | Fixed term in office and possibility for renewal                     | x  |                |              |                 | x              |              | x                     |                |              |
| 2.5  |                    | Clarity on the grounds for removal from office                       | x  |                |              |                 | x              |              | x                     |                |              |
| 3.1  | 3. Resources       | Sufficiency of financial resources                                   |  | x              |              |                 | x              |              |                       | x              |              |
| 3.2  |                    | Security and stability of budget                                     |  | x              |              |                 | x              |              |                       | x              |              |
| 3.3  |                    | Authority to prepare its own budget                                  | x  |                |              |                 | x              |              | x                     |                |              |
| 3.4  |                    | Authority to freely execute its approved budget                      |  | x              |              |                 |                | x            |                       | x              |              |
| 3.5  |                    | Autonomy to generate its own financial revenues                      | x  |                |              |                 |                | x            |                       | x              |              |
| 3.6  |                    | Oversight over the ACA's financial resources                         |  | x              |              |                 |                | x            |                       |                | x            |
| 3.7  |                    | Securing optimal premises and operating conditions                   |  | x              |              |                 |                | x            |                       |                | x            |
| 3.8  |                    | Employees' status and their hiring procedures                        |  | x              |              |                 |                | x            |                       |                | x            |



| Assessment framework for parliament's relationship to anti-corruption agencies<br>(continued from p16) |                |  | Role of parliament, depending on the type of the ACA |                |              |                 |                |              |                       |                |              |
|--|----------------|--|--|----------------|--------------|-----------------|----------------|--------------|-----------------------|----------------|--------------|
|  |                |  | Multi-purpose  |                |              | Law enforcement |                |              | Policy and prevention |                |              |
|  |                |  | Lead role  | Oversight role | Weak/no role | Lead role       | Oversight role | Weak/no role | Lead role             | Oversight role | Weak/no role |
| 4.1  | 4. Reporting   | Submitting annual report to parliament and/or government                   | x  |                |              | x               |                |              | x                     |                |              |
| 4.2  |                | Structure and content of annual report                                     |  | x              |              |                 | x              |              |                       | x              |              |
| 4.3  |                | Clear parliamentary procedures regarding follow up to ACA reports          | x  |                |              | x               |                |              | x                     |                |              |
| 4.4  |                | Parliamentary debate and follow up actions on ACA reports                  | x  |                |              | x               |                |              | x                     |                |              |
| 4.5  |                | Authority to submit information and reports at ACA's own initiative        | x  |                |              | x               |                |              | x                     |                |              |
| 5.1  | 5. Cooperation | Existence of designated parliamentary committee on corruption              | x  |                |              | x               |                |              | x                     |                |              |
| 5.2  |                | Extent of involvement of ACA in parliamentary anti-corruption policy work  | x  |                |              | x               |                |              | x                     |                |              |
| 5.3  |                | Parliamentary support for ACA's awareness-raising role and ACA initiatives | x  |                |              | x               |                |              | x                     |                |              |
| 5.4  |                | Facilitating inter-institutional cooperation                               |  | x              |              |                 |                | x            |                       |                | x            |

## 4. Explanation of the instruments and indicators

In this section we provide a narrative description of the indicators for all five instruments we use to assess parliament's relationship to anti-corruption agencies.

### 4.1 Establishing the legal framework and mandate of the ACA

We consider that an ACA must be established by primary, parliament-approved legislation that guarantees: its independence, a clear and strong mandate, and the strength of institutional objectives. In addition, it is of critical importance to assess its independent functioning in practice.

#### 4.1.1 Secure legal foundation

Establishing an institution based upon a secure legal foundation is a *conditio sine qua non* for a strong ACA. The Jakarta Statement on Principles for Anti-Corruption Agencies stipulates that the ACA should be established by a proper and stable legal framework, such as the constitution or a special law to ensure continuity of the ACA.<sup>18</sup> Indeed, ACAs should ideally be established by the constitution. Other solid legislative bases include national legislation, either in form of so-called organic law<sup>19</sup> on anti-corruption agencies or a law implementing international treaties or conventions, such as the UN Convention Against Corruption. Creating an ACA by other parliamentary acts of lower strength than laws, such as a parliamentary resolution or motion, or by executive decisions, such as presidential, royal or governmental decrees, presents a much weaker legal framework. The institution's legal foundation depends also on the country's constitutional system. For instance, ACAs may have a different legal foundation in a Westminster system or in the so-called Napoleonic system. However, irrespective of the constitutional system, establishing a secure legal foundation for the agency is an issue where parliament has primary responsibility.

A high score on the legal foundation indicator would be given if the ACA is established by the constitution, a medium score if it is established by the law, while a low score is given if it is established by decree or any other decision of the executive body.

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18. Jakarta Statement on Principles for Anti-Corruption Agencies, November 26-27, 2012.

19. An organic law is a law, or system of laws, that forms the foundation of a government, corporation or any other organisation's body of rules. A constitution is a particular form of organic law for a sovereign state. For instance, under Article 46 of the Constitution of France, organic laws (in French, *lois organiques*; in English sometimes translated as Institutional Acts) are a short, fixed list of statutes (in 2005, there were about 30 of them) specified in the Constitution. They have constitutional force and so overrule ordinary statutes. They must be properly enacted by the Parliament of France and must be approved for constitutionality by the Constitutional Council of France before they can be promulgated. Organic laws allow flexibility if needed. An important category of organic laws includes the budgets of the French state and French social security. Other organic laws give the practical procedures for various elections. Organic laws reduce the need for amendments to the constitution.

### **Box 1: Anti-Corruption Commission of the Maldives established by the Constitution**



A good example of an ACA with a strong legal foundation is that of the Maldives. The 2008 Constitution of the Maldives established the Anti-Corruption Commission (ACC) as an independent and impartial institution. As a constitutionally ranked institution, the ACC can be abolished only with the amendments of the Constitution, for which a three quarters majority of the total membership of the People's Majlis (Parliament) is needed. To that end, the ACC is provided with solid legal safeguards against attempts to abolish the institution.

The legal foundation is required to prevent an institution from being abolished with ease or to prevent its governance arrangements from being inappropriately amended. The permanence of the institution and the possibility of dissolution needs a secure legal foundation, so the ACA can function independently.

#### **4.1.2 Clarity of mandate and institutional objectives**

Different institutions may have a very different role and responsibility, and so clarity in the mandate reinforces an institution's ability to exercise its role.

The mandate, role and responsibilities of the ACA should be determined primarily by the legal document establishing the institution. In general, establishing additional mandates or responsibilities by other legal acts should be avoided, because they can be changed with greater ease and more frequently, creating jurisdictional confusion and making long-term planning difficult.

There is need for clarity as to the allocation of responsibility between government departments and the ACA. It is equally important to clearly separate mandates and jurisdictions of different independent bodies in charge of curbing corruption. Establishing a clear institutional architecture to fight corruption is an issue where parliament has a primary responsibility.

For instance, where there is a law-enforcement type of ACA, legislation should not just clearly lay down its mandate, but also that of the institution(s) in charge of other important elements of anti-corruption strategy, such as policy, education and/or prevention.

#### **4.1.3 Legal guarantees of institutional independence**

Independence is an essential feature of the ACA. Guarantees of institutional independence should be clearly stipulated in the founding legislation. It means the ACA is able to perform its functions without any external interference or influences. To be able to do so, it has to be institutionally separated from any other body.

## **Box 2: Legal provisions on independence of ACAs in Serbia and Indonesia**



In Serbia, the law establishes the Agency for Prevention of Corruption as an autonomous and independent state body, accountable only to the National Assembly of the Republic of Serbia (Parliament) for performance of duties from its purview.

In Indonesia, the law stipulates that the Corruption Eradication Commission (KPK) is a public institution within the executive branch of the government that is independent and free from any influence in carrying out its duties and authority.

A high score on this indicator would be given if the ACA is established as an independent entity, a medium score if it is established as a separate entity outside a ministry, but still part of the executive or judiciary, while a low score would be given if it is established within the ministry or other state entity.

### **4.1.4 Independent functioning in practice**

Under this criterion, one needs to assess the extent to which the ACA genuinely operates independently, and whether its activities are conducted without undue external interference. This means assessing how far the legal framework guaranteeing the independence of the ACA translates into effective ACA policy and operations rolled out in an independent way.

A high score on this indicator would be given if the ACA is conducting its work in a fully independent way and is recognised as such, a medium score if there is apparent or suspected undue external influencing of the work of the ACA, while a low score would be given if the ACA's work is not considered to be independent and is possibly part of attempts at political instrumentalisation of anti-corruption efforts.

## **4.2 Selection, appointment and removal of the leadership of the ACA**

Irrespective of the type of ACA, best international practices advise that parliament has a notable role in the selection, appointment and removal procedures of the leadership of the ACA. Independence of the ACA will be higher when: the nomination is confirmed by a multi-party parliament (including opposition parties), or by a mixed interaction of the executive and the legislature, and based upon a professional competency test, rather than being a government decision only. Best international practices advise that parliament sets the conditions for recruiting, reappointment and removal, and ensures a guaranteed term of office for the head of the ACA.

### **4.2.1 Nomination, confirmation, or appointment process for ACAs' leadership**

The nomination or confirmation process for the heads of the independent agencies is also a relevant indicator of independence. Independence will be highest when the process is solely conducted by the parliament, a little bit less if it is a mixed interaction of the executive (or judiciary) and the legislature, while there will be no independence if the entire process is conducted by the executive.

The degree of the executive's involvement in the process depends on the type of ACA. With more law enforcement functions it is expected that the executive or the judiciary will have a more prominent role in the selection and appointment process. However, we believe that the parliament should be included in the process even in this case.

If the selection and appointment of the ACA leadership is taking place within the judiciary chain of command, it should not necessarily be considered independent. While in many countries the courts are independent, prosecutors might not be. So, if the prosecutor appoints the head of the ACA, it does not necessarily mean that the ACA is independent.

### ***Box 3: Examples of different parliaments' roles in appointing ACAs' leadership***

ACC (Namibia): The National Assembly appoints the director upon nomination by the President.

KPK (Indonesia): The Parliament selects commissioners after a multi-stakeholder selection committee prepares a shortlist and submits it through the President.

ACC (Bhutan): The King appoints the chairperson from a list of names compiled jointly by the prime minister, chief justice, Speaker of parliament, National Council, and leader of the opposition.

KPK (Slovenia): The President appoints chair and deputies from a shortlist prepared by a committee of five members appointed from the government, National Assembly, anti-corruption NGOs, Judicial Council, and Officials' Council.

In other words, parliament can have a lead role, in cases when an independent or parliamentary committee is running the process, using objective or merit-based criteria in selecting the head of the agency, and when the procedure is transparent. An oversight role for parliament is reserved for cases when an executive or judiciary body leads the nomination and selection process, and then propose the candidate(s) to the parliament which then confirms or appoints them, while 'no role' for the parliament exists in situations when the selection and appointment is done by the Prime Minister or President without clear criteria and without participation of the parliament.

#### **4.2.2 Merit-based, competitive, and timely selection of ACAs' leadership**

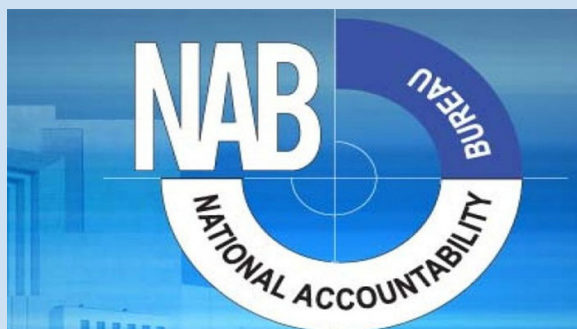
Recruitment based upon clear selection criteria and professional competency constitutes the minimum basis of any human resources policy. The procedure for nominating candidates and their vetting procedure should be regulated in detail, to allow for a fair, transparent and inclusive process.

Irrespective of the type of ACA, the possibility of having public competition should always be explored, because such procedures guarantee more potential candidates.

The type of ACA is, however, relevant when prescribing formal requirements for an ACA's leadership. In the case of a law enforcement agency, a background in policing or the judiciary should be particularly relevant. On the other hand, candidates from civil society or academia may be better equipped to conduct awareness-raising campaigns and perform the prevention function of the ACA. In any case, having relevant professional experience should be one of the central requirements.

In other words, the appointment of sector specialists over politicians, former parliamentarians or retired army officers is an indicator of growing practical independence of an ACA.

#### **Box 4: Requirements for the Chairperson of National Accountability Bureau of Pakistan**



The National Accountability Bureau (NAB) is Pakistan's premier anti-corruption body. While having a broad mandate, including investigation, prosecution, prevention and awareness, it is most recognisable by its investigation and prosecution functions. NAB is managed by the Chairperson, who must fulfil one the following three requirements in order to be appointed:

- to be a retired Chief Justice or a Judge of the Supreme Court or a Chief Justice of a High Court;
- to be a retired Officer of the Armed Forces of Pakistan equivalent to the rank of a Lieutenant General; or
- to be civil servant of the highest rank.

In some countries, the selection of an ACA's leadership is sometimes hampered by substantial delays, which create risks for its effective governance and independence. Public vacancies and merit-based selection, which happen in a timely manner, contribute to the independency of the agency.

Typically, the minimum qualifications, main roles, and responsibilities of the head of the ACA are laid out within the legislation establishing the authority or regulating its functioning. This provides the statutory basis for the selection of candidates and for the assessment of their performance.

#### **4.2.3 Collegial decision making**

The governing structure of the ACA should be clearly defined in the founding legislation. There are some single-headed ACAs with no internal decision-making collegial bodies, such as the National Accountability Bureau in Pakistan, mentioned above. However, being governed by collegial (in other words, group-based) decision making, offers the possibility to ACAs of having more substantial internal, expertise-based deliberation prior to adopting a decision. ACAs are usually governed by multi-member bodies, such as commissions, or are headed by a single person, such as a director, who is supervised by a multi-member body, such as a board or council. Collegial decision making through a board, council or commission can increase the legitimacy of the decisions and hence reinforce the independence of the agency.

#### **4.2.4 Fixed term in office and possibility for renewal**

A guaranteed (or fixed) term of office for the head of the ACA is another key element of international best practices to be clearly provided for in the founding legislation. There are no fixed, binding international standards on the length and possibility of reappointment of heads of independent state institutions, such as ACAs.

In recent years, there has been a growing understanding that the term of office of heads of independent state institutions should be considerably longer than the mandate of the appointing body.

**Box 5: The possibility of reappointment to an ACA's leadership**



The possibility of reappointment should be considered in the closest connection with provisions on the appointment procedure. If the leadership of an ACA is appointed in the parliament with a qualified majority, such as two-thirds or three-fifths, it is expected that in a pluralistic democratic society, such a majority would have to include the votes from the opposition parties as well. Thus, if the ACA's work was indeed influenced by an interest for gaining reappointment; that is, through perhaps being less critical of the government, then it is expected that the opposition parties would hardly support such a reappointment.

Furthermore, as mentioned, the mandate of the head of the ACA is, by rule, longer than that of MPs. Even if an ACA's leader calculates on the basis of receiving support from the ruling majority during his/her term in the office, it is quite possible that there would be another ruling majority, before the time comes for their own re-election, which would certainly not be in favour of such a candidate. The (re)election of the ACA's management with a firm qualified majority should enable the selection of the best candidate with stronger support from different parts of the political spectrum represented in the parliament, regardless of whether it is a new candidate or the one already holding the office.<sup>20</sup>

**4.2.5 Clarity on the grounds for removal from office**

The leadership of the ACA should be removed from office only according to an exhaustive list of clear and reasonable conditions established by law. These should relate solely to the essential criteria of 'incapacity' or 'inability to perform the functions of office', 'misbehaviour' or 'misconduct', which should be narrowly interpreted. Policy disagreement with the president or government should not be reasons for removal in any circumstance.

Even in cases where multiple institutions participate in the selection and appointment process of the ACA's leadership, that is, the executive and the legislature, it should be within parliament's remit to remove them. The parliamentary majority required for removal – by the parliament itself

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20. Adapted from: Luka Glušac, A Critical Appraisal of the Venice Principles on the Protection and Promotion of the Ombudsman: An Equivalent to the Paris Principles?, *Human Rights Law Review*. (forthcoming)

or by a court at the request of parliament - should be equal to, and preferably higher than, the one required for appointment. The procedure for removal should be public, transparent and provided for by law.

### **4.3 Allocating or controlling resources allocated to the ACA**

Parliament plays a critical role in allocating financial resources for the work of the ACA, but should also control whether the government has allocated optimal premises for it. Parliament should also make sure that the labour status of the ACA's employees is suitable for this type of oversight body.

#### **4.3.1 Sufficiency of financial resources**

The allocation of financial resources to an ACA for the performance of its tasks and functions is a key indicator for its relationship with parliament.

Sufficient and independent budgetary resources shall be secured to the ACA. The law shall provide that the budgetary allocation of funds to the institution must be adequate to the need to ensure full, independent and effective discharge of its responsibilities and functions. If the applicable legislation foresees that the Supreme Audit Institution (SAI) assesses the use of the financial resources by the ACA, the SAI can be asked to make an independent assessment of whether the financial resources provided to the ACA are sufficient to perform its role and responsibilities in an independent way.

This indicator covers both the amounts budgeted for the ACA and the actual transfer of funds to the ACA. Given the frequent disconnect between what is passed formally in the budget and what actually happens, one needs to verify that the budget allocations were actually translated into actual transfers to the ACA.

A high score on this indicator would be given if the ACA has sufficient resources secured in the state budget and these budget allocations are fully transferred or executed during each budget year. A medium score would be given if the state budget foresees sufficient budget but the transfer of funds or execution of the budget does not cover the full amount and the ACA faces reduced resources during the course of the year(s). A low score would be given if the budget secured for the ACA is insufficient for it to be able to perform its duties.

#### **4.3.2 Security and stability of budget**

Predictability, security and stability of the budget is an important indicator of parliament's strategic commitment to support the ACA. A measurement period of three years is reasonable. This indicator measures the extent to which the ACA receives guarantees for its budget beyond one year.

As an example, a high score on this indicator would be given if the ACA budget is guaranteed based on the previous year's allocation and has not been reduced. A medium score would be given if the budget has not been reduced during the past three years. A low score would be given if the budget has been reduced during the past three years.

Still, this indicator needs to be analysed within the specific national context. In case of a rapidly rising corruption problem in the country, a guarantee to keep the budget at the same level for several years might not necessarily be sufficient, and might justify a substantial increase of the ACA's budget.



### 4.3.3 Authority to prepare its own annual budget

It is vital that the ACA is given the mandate to draft its annual budget, in accordance with the macro-economic context and aligned with the general applicable rules and regulations of the budget process.

There are different procedures for adopting the budget of the ACA. In some countries, appropriation for the work of independent oversight bodies is part of the annual appropriation act of parliament.<sup>21</sup> In other countries, the ACA drafts its budget, which is then subject to approval by the Ministry of Finance, before being sent to the parliament. In cases where the ACA's budget falls under another department's ambit (such as the Ministry of Justice or Prime Minister's Office), the guarantees for the independence of the ACA are sharply reduced. The mechanism which guarantees the ACA's independence in the strongest possible way is that the ACA prepares its own budget, which is then formally approved by parliament without interference by the government.

#### **Box 6: Authority of Montenegro's ACA to prepare its own annual budget**



In Montenegro, the Law on Prevention of Corruption provides for strong guarantees of financial independence of the Agency for Prevention of Corruption (APC), including through ability to prepare its own annual budget.

The Law stipulates that funds for the work of the APC shall be provided in the state budget. APC proposes its own draft and submits it directly to the Parliament. The Parliament then determines the draft budget of the APC and submits it to the Government. Funds approved for the operation and functioning of the APC must not amount to less than 0.2% of the current budget. If the Government makes changes to the Draft Law on Budget in part related to the APC, it has to submit an official explanation in writing to the Parliament. Upon the approval of the state budget by the Parliament, APC decides independently on the use of funds allocated to it.

Based on the assessment framework included in a recent research report by Transparency International for the Asia region, a high score on this indicator would be given to ACAs if the available budget is more than adequate (between 80% to 100% of the budget request is approved). A medium score would be given if the budget is adequate (with 66% to 79% of the budget request approved). A low score would be given if the budget is inadequate (less than 66% of the budget request is approved) and the ACA relies on funding by CSOs and donor agencies.<sup>22</sup>

21. Roger Wettenhall, Integrity Agencies: The Significance of the Parliamentary Relationship, *Policy Studies*, 33:1, 2012, 73.

22. Transparency International, Strengthening Anti-Corruption Agencies in Asia - Pacific, October 2017, 35.

#### **4.3.4 Authority to freely execute its approved budget**

The approved budget for the institution should not be reduced during the financial year, unless the reduction generally applies to other state institutions.

The ACA should be able to execute its budget, according to its own needs and tempo, without any interference by the government or parliament. Suspending the execution of the budget or creating administrative barriers in execution of otherwise available funds are among the easiest ways to suppress the ACA; and should be avoided.

Alongside the authority to freely execute its approved budget, it is important to foresee in provisions that ACA officials abide to a code of conduct and conflict of interest declaration, and disclose their wealth and property (of themselves and direct relatives) at the beginning and end of their tenure, and possibly on an annual basis.

A high score on this indicator would be given if the ACA can execute its budget directly and with no limitation. A medium score would be given if the ACA executes its budget over the State Treasury (or similar body) which can postpone or stop a payment. A low score would be given if the ACA needs an approval from the State Treasury (or any other body) for every transaction.

#### **4.3.5 Autonomy to generate its own financial revenues**

Many ACAs are entitled to impose fees and fines on those who violate anti-corruption rules and regulations. However, depending on the individual case, those funds go directly to the ACA's budget or may go to the 'central' state budget, meaning the agency cannot use them directly. Another possibility is that the ACA receives a percentage of funds it recovers. For instance, in Pakistan, according to the Recovery and Reward Rules, the ACA should receive a two per cent share of the total recovery it makes.

If the agency has the possibility to generate part of its own financial revenues it has a larger independence than when it receives its revenues solely from the state budget. Such additional funds may be used to award employees responsible for recovering them from illicit activities.

For instance, a high score on this indicator would be given if the ACA keeps a legally defined percentage of funds it recovers. A medium score would be given if the ACA keeps only the funds from smaller fines and penalties. A low score would be given if the ACA keeps no portion of recovered funds or penalties charged.

However, one could also argue that the budget of an ACA should be independent from how successful it is. A nuance to the scoring could be the extent to which retained funds are explicitly supplemental to regular budget. A low score would be where any income is offset by lowering the regular budget allocations.

#### **4.3.6 Oversight over the ACA's financial resources**

Accountability is strengthened if oversight of the ACA's budget is clearly regulated in a way which does not pressure the ACA in the execution of its mandate. Across countries different practices have emerged. In some cases, the body which is in charge of approving the resources for the ACA is also responsible for oversight. In some countries, this is a parliamentary committee, and in other countries, it is a ministerial department (in cases when the funds for ACA's work are allocated from

a ministerial budget line, which should be avoided, as outlined above). Our preference is that the State Auditor or equivalent Supreme Audit Institution (SAI) should be required to examine the financial statements of the ACA. Such independent financial audits of the ACA's budget should consider only the legality of financial proceedings and not the choice of priorities in the execution of the mandate.

A high score on this indicator would be given if the oversight of the ACA's budget is conducted by another independent body such as the SAI. A medium score would be given if the oversight of the ACA's budget is conducted by a parliamentary committee. A low score would be given if the oversight of the ACA's budget is conducted by a ministerial department.

#### **4.3.7 Securing optimal premises and operating conditions**

In general terms, it is the responsibility of the government to allocate optimal premises for the ACA, in terms of its location, infrastructure, available equipment, maintenance, its accessibility to different vulnerable groups and so on. Parliament should make sure and verify that the premises are suitable for the work of the ACA.

#### **4.3.8 Employees' status and their hiring procedures**

The 'Jakarta Statement on Principles for Anti-Corruption Agencies' stipulates that ACAs should have the power to recruit and dismiss their own staff according to internal clear and transparent procedures. It is an important indicator of independence if the head of the institution has the authority to select and appoint staff, provided they have the appropriate qualifications and professional expertise.

Seconding staff from another institution, ministry or public authority should be avoided. It can undermine the independence of the ACA to select its own staff if the head of ACA has little influence over who is seconded to the agency. It can lead to an undermining of the effectiveness of the seconded staff while in the ACA if they know that one day they will have to return to their home department - which may have been subject to scrutiny by the ACA.

ACAs are independent oversight institutions, and that should be reflected in the status of their employees as well. That means that ACAs' staff should not be regular civil servants but be employed under terms and conditions that reflect their distinctive roles and functions. However, in several countries ACAs' staff often do have the status of civil servants, which affects their both formal rights and obligations, and their salary levels. Even in those cases, some adjustments have to be applied. The fact that ACAs' staff are civil servants should not influence ACAs' ability to hire their staff on their own. General procedures may be applicable, in terms of transparency, competition, procedural fairness and so on.

In countries where the hiring procedure for state authorities is centralised, the competent body may even perform initial vetting procedures for ACAs' staff, but an ultimate decision to hire should be the sole competence of the ACA management.

Furthermore, some flexibility in implementing the remuneration schemes of the civil service might help to retain the adequate level of expertise as well as to minimise the risk of capture. Multi-purpose and law enforcement types of ACAs need technical and specialist expertise that is more difficult to bring in through staff from the civil service. Such experts are attracted only with higher remuneration levels. The extent to which an ACA has the authority to decide on the remuneration of staff is an indicator of its independence as well.

A high score on this indicator would be given if the ACA can fully decide on the remuneration of staff. A medium score would be given if the remuneration of staff is determined by their status of civil servants, but the ACA is given the right to additionally financially award employees depending on their performance. A low score would be given if the staff positions are completely regulated by general rules and regulations, with no manoeuvring space for the ACA to make these positions more attractive to experienced specialists.

#### **4.4 Consideration of and follow-up to annual and other reports of the ACA**

The obligation to submit annual reports is a standard requirement for ACAs. Annual reports are typically submitted to the institutions responsible for the appointment of the ACA's leadership, that is, either exclusively to parliament or to parliament and the executive (government or head of state).

Legislation governing ACAs establishes reporting obligations, though not in a consistent way and often without specifications about what should be included in the reports or how often reports should be submitted. Furthermore, in some countries, the reports of an ACA get marginal attention and few follow-ups. In other countries, there is a more systematic approach to analysing, debating and following up reports' findings and recommendations. Still, these reports often include valuable information which can be of use for the parliamentary oversight work or they enable a more in-depth analysis of draft legislation under review.

##### **4.4.1 Submitting annual report to parliament and/or the government**

ACAs should be required to submit annual (or semi-annual) reports to the parliament. Optionally, and based upon applicable legislation, such reports may be submitted to the president or the government as well, if they have a role in the selection and appointment of ACA's management. In some countries, an ACA might be required to send its annual report to the president of the country, who might delay or fail to release the report to parliament. This should be avoided in any circumstances, and the annual report should be directly submitted to the parliament.

A high score on this indicator would be given if the ACA submits an annual report directly to the parliament. A medium score would be given if the ACA submits an annual report to the parliament through an intermediary (such as the president or the government), which then forwards it to the parliament. A low score would be given if the ACA reports only to the executive or judiciary.

##### **4.4.2 Structure and content of the annual report**

Given their independence, ACAs should be given the right to freely design the structure and general content of their annual reports. However, legislation should make clear that the annual report should not only cover ACAs' performance and finances, but should also contain substantive information on key successes and challenges in the wider fight against corruption, as well as recommendations to the state authorities on how to improve anti-corruption efforts.

### **Box 7: Requirements of the annual report of the ACA of Ukraine (NABU)**



The law is very detailed on the content of the report submitted by the National Anticorruption Bureau of Ukraine (NABU). It stipulates that it must contain the following information:

- (1) a comprehensive statistical elaboration of all quantifiable information on its work;
- (2) cooperation with other public authorities, local authorities, companies, organisations and establishments;
- (3) cooperation with competent foreign authorities, international and foreign organisations and signing agreements on cooperation and representing interests abroad;
- (4) cooperation with NGOs and mass media;
- (5) number of the NABU employees, their qualification, work experience and further training;
- (6) work of the NABU Internal Control Department; number of reports on offences committed by the NABU employees, investigation results and bringing to justice;
- (7) budget of the NABU and its execution; and
- (8) other information concerning the results of the NABU activities and duties.

#### **4.4.3 Clear parliamentary procedures regarding follow-up to ACA reports**

ACA reports should be only for consideration and discussion in parliament. Parliament should not vote to approve it or not, because the presence or threat of voting against it would constitute a challenge to the ACA's independence. The report's purpose is to inform the parliament on the work of the ACA, on the one hand, and to highlight major challenges in curbing corruption, on the other hand. The parliament should indeed have the obligation to discuss ACA reports and adopt relevant conclusions about it, but only in terms of its own respective actions towards the executive. Such follow-up procedures to ACAs' reports are of great importance for the parliamentary oversight function over the executive as well, as parliament should make sure that key ACA recommendations presented in the report are properly addressed by the competent state bodies. This is a crucial test of how seriously a parliament actually takes the ACA's work and recommendations.

A high score on this indicator would be given if there is a clear and detailed procedure obliging the parliament to consider and follow-up on ACA reports. A medium score would be given if the law stipulates that the parliament should discuss ACA reports, but with no defined procedure. A low score would be given if the law is silent on parliamentary follow-up on ACA reports.

### **Box 8: Follow-up procedures for the annual report of the ACA of Serbia**



Parliamentary Rules of Procedure of the National Assembly (Parliament) of the Republic of Serbia regulate the procedure for the consideration of annual reports of independent bodies, including the Agency for Prevention of Corruption. Upon receiving the APC's annual report, the Speaker of the National Assembly communicates the report to MPs and the competent committee. In case of the APC, it is usually the Committee on Finance, State Budget and Control of Public Spending that considers the APC's report. However, others might be designated as well. The competent committee has to consider the report within 30 days from

the day of submission. The APC representative is invited to the sitting of the competent committee, when it considers the report on the agenda. Upon consideration of the report, the committee submits a report to the National Assembly together with its draft conclusion on the report. The National Assembly then considers the APC's report and the report of the competent committee, with the draft conclusion. Upon conclusion of the debate at the sitting attended by the majority of MPs, the National Assembly adopts by a majority vote a conclusion. In other words, the National Assembly votes on the adoption of a conclusion of its competent committee about the APC's annual report, and not on the report itself. This is important as it prevents the Assembly from proceeding with a proposal of dismissal of the head of the APC in the event that it does not adopt the annual report.

#### **4.4.4 Parliamentary debate and follow-up actions on ACA reports**

In addition to the existence of clear and detailed parliamentary procedures regarding follow-up on ACA reports, an additional indicator, which is as important, is about how the procedure is followed fully and whether these steps actually lead to follow-up actions.

In several countries, existing parliamentary procedures for considering ACA reports are not adhered to, as either the relevant committee(s) do not review the ACA report, plenary sessions do not debate the report or no follow-up actions on the ACA's recommendations are taken forward. The reasons for this may be related to a lack of political interest and non-prioritisation of the ACA report, a lack of time in view of other parliamentary business, or external developments affecting the parliamentary schedule including elections. While existing parliamentary procedures may be clear and detailed on how parliament will follow up on the ACA report, the practice in real parliamentary life deserves its own attention, and thus constitutes a separate indicator.

#### **4.4.5 Authority to submit information and reports at the ACA's own initiative**

Besides annual reports, ACAs should also have the right to submit special reports to the parliament. Parliament should be obligated to discuss them. In addition, the ACA should be able to submit any other relevant information to the parliament at its own initiative.

This does not exclude the possibility for the parliament to express a suggestion to request a specific inquiry regarding a key issue, without the ACA being obliged to follow the suggestion, thus ensuring that its independence is not harmed.

## 4.5 Cooperation with the ACA

This instrument aims to provide evidence of more practical elements regarding relations between parliament and the ACA, concentrating on the cooperation between parliamentary committees and the ACA, as well as participation by the ACA in parliamentary activities.

### 4.5.1 Existence of a designated parliamentary committee on corruption

Parliament should identify or establish an appropriate parliamentary committee as the main point of contact with the ACA. Two functions are of particular importance here: one function regarding the selection and appointment procedure for the ACA's management, and one function that primarily deals with anti-corruption policies. Both functions are not necessarily subsumed in a single committee. That does not mean that the committees dealing with these two functions should be the only ones that cooperate with ACAs. The number of relevant parliamentary committees interacting with the ACA depends on their organisation and competences.<sup>23</sup>

#### **Box 9: Designation of parliamentary committee for ACA in the Maldives**



The Standing Orders of the People's Majlis (Parliament) of the Maldives established a permanent Committee on Independent Institutions, to oversee the functioning of all independent institutions, including the Anti-corruption Commission (ACC).

The Committee:

- holds to account individuals posted in the ACC;
- ensures the ACC submits yearly reports to the Majlis and reviews those reports;
- investigates complaints filed by members of the public and other parties with regard to the ACC and recommends appropriate measures, accordingly;
- reviews and finalises bills submitted to parliament on the ACC and submits them to the parliament for consideration;
- gathers information on, reviews and interviews individuals who require parliamentary approval as appointed members of the ACC and submits this to the parliament for consideration;
- meets the ACC, gathers information on its work and makes recommendations.

23. Luka Glušac, *Assessing the Relationship between Parliament and Ombudsman: Evidence from Serbia (2007-2016)*, *The International Journal of Human Rights*, 23:4, 2019, 545.

#### **4.5.2 Extent of involvement of the ACA in parliamentary anti-corruption policy work**

Parliamentary committees should regularly interact with the ACA. A useful mechanism for establishing and developing cooperation between parliamentary committees and the ACA is the public hearing. Through these, committees obtain information, expert opinions, and alternative perspectives on proposed legislation or policy issues so as to produce more effective and sounder laws. Whenever anti-corruption is discussed, and particularly when a new or existing anti-corruption or integrity policy is discussed at a public hearing, the ACA should be invited to present its views. Beyond public hearings, ACAs should be consulted through regular legislative processes on the content and applicability of a proposed law with respect to wider (anti)corruption implications reflected therein. Parliament also has a vital role to play in communicating to the wider public the role and purpose of ACAs, and being vocal in promoting the significance of their work in improving levels of public integrity.

#### **4.5.3 Parliamentary support for ACAs' awareness raising role and ACA initiatives**

The relations between parliament and the ACA should be a two-way street, meaning not only that the parliament should initiate cooperation with the ACA, but that it should also be responsive to suggestions and proposals from the ACA, making sure they are properly and promptly addressed and discussed. Supporting the public outreach and awareness raising role of the ACA is of high importance. Parliaments can play an important role in supporting the ACA's public messaging on anti-corruption and ethical behaviour.

#### **4.5.4 Facilitating inter-institutional cooperation**

The performance of independent oversight bodies such as an ACA is very much dependent on the performance of other institutional actors. Parliament needs to ensure that there is a clear regulation of the ACA's relations with other state and public authorities. This will contribute to clearly defined and smoothly operating working relationships with other institutional actors, in particular the ones for enforcement, such as the Prosecutor General.

Ensuring that other parts of the state system contribute to combatting corruption, and are not effectively frustrating the ACA's work, determines to a large extent the effectiveness of ACAs. Parliament may also play a role in judging the extent to which other parts of the government are sufficiently supportive or create obstacles.

The ways and means of cooperation of these different bodies should be stipulated by the law. Memoranda of understandings or cooperation should be used only to specify technical details of such cooperation, not to establish them.

Legislation adopted by parliament will lay the groundwork for inter-agency cooperation, ensuring that other public bodies, on which the ACAs relies, are providing effective collaboration.



## 5. How to use this assessment framework

With this assessment framework, we aim to provide a comprehensive set of instruments and indicators that can be used in different institutional contexts. This framework is designed to be used as a toolkit which will be particularly useful to researchers and parliamentary assistance programmes on at least two levels: (1) to review parliaments' relationship with anti-corruption agencies; (2) to identify opportunities for policy advice and technical support to parliament; and (3) to support the establishment of effective and independent ACA frameworks.

This framework enables a review of parliament's relationship with ACAs, determining if parliament has a leading role, oversight role, or weak (or no) role for each of the indicators. This will then enable measurement of the strength of parliament's interaction with the ACA in a more objective way.

The scorecard provided in the annex may be used to copy and paste ideal scoring for a particular type of ACA from our main table above and then insert the scores (high, medium, low), after analysing individual indicators for a given country.

Based upon this measurement, one can identify the opportunities for parliamentary support programming, for policy advice and for technical support to parliament.

For instance, on the indicator 'clarity of mandate and strength of institutional objectives', parliament has a leading role irrespective of the type of the ACA. If the assessment reveals that the score is medium or low, this provides an opportunity for programme and policy advice.

On the indicator 'sufficiency of financial resources for performing its functions', parliament has a leading role in all ACA types. If the scoring is at medium or low, there is an opportunity to work with parliament to fully exercise its oversight function to strengthen the financial resources for the institution.

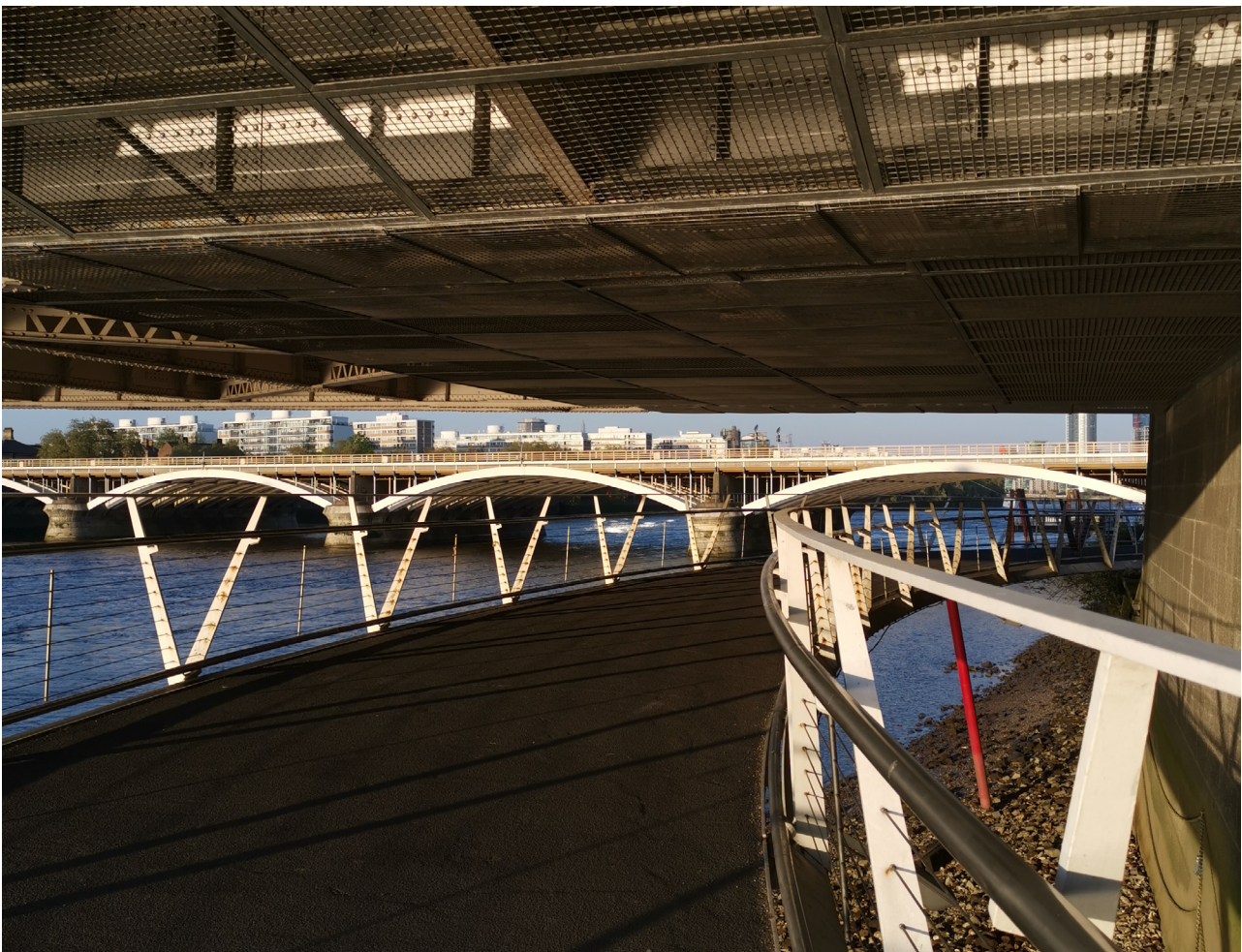
One of the accountability indicators is the annual reporting. Parliament has a leading role in providing for a clear and transparent procedure of its consideration both in the committees and plenary. If the scoring here is low, this provides an opportunity for programming and assistance.

Similarly, the entire set of 'cooperation' indicators is the sole responsibility of the parliament. However, given that these indicators are of a more practical rather than formal nature, they can be analysed while having in mind the broader contextual picture of parliament's performance. In other words, with the exception of designating the main parliamentary committee for the ACA, which is a strategic decision to be made by amending parliamentary rule of procedures or standing orders, other indicators within this group can indeed easily change with time and should be regularly monitored. While this instrument (and its indicators) can equally be applied to any ACA type, other instruments, such as selection and appointment, are dependent on the ACA type.

The role of the parliament in selection and appointment processes varies according to the ACA type and political system, the latter in terms of the composition of the executive. Parliament can have a strong lead role, in cases when an independent or parliamentary committee is running the process, using objective criteria in selecting the head of the agency and when the procedure is transparent. This is usually the case for the policy and prevention type of ACA. An oversight role is reserved for cases when an executive body leads the nomination and selection process, and then propose the candidate(s) to the parliament which then appoints them. This is often case with multi-purpose agencies with a prosecution function. No role exists in a situation where the

selection and appointment is done by the prime minister or president without clear criteria and without participation of parliament. This is sometimes done with a clear-cut law enforcement ACA but should be avoided in any circumstances. In those cases, the independence of such agencies is highly disputed.

Although in this assessment framework we use a scoring method which includes an ideal measure, it is important to clarify that we do not expect to come across the perfect case in practice. As with other similar assessment exercises, this framework also serves to assist in establishing the baseline and key benchmarks, taking into account the specific local context. Informal practices and customs elude any formal assessment framework. Thus, when applying this framework, one should be conscious of wider political and legal processes, and the stage of democratic development of a given country.



## Annex 1: Scorecard

| Assessment framework for parliament's relationship to anti-corruption agencies |                       |  | Scoring  |            |         | Role of parliament given the type of ACA in country (copy-paste values from the main table) |                |                 |
|--|-----------------------|--|----------|------------|---------|---|----------------|-----------------|
|  | Instruments           | Indicators   | High (3) | Medium (2) | Low (1) | Lead role   | Oversight role | Weak or no role |
| 1.1  | 1.<br>Legal framework | Secure legal foundation  |          |            |         |   |                |                 |
| 1.2  |                       | Clarity of mandate and strength of institutional objectives            |          |            |         |   |                |                 |
| 1.3  |                       | Legal guarantees of institutional independence                         |          |            |         |   |                |                 |
| 1.4  |                       | Independent functioning in practice                                    |          |            |         |   |                |                 |
| 2.1  | 2.<br>Leadership      | Nomination, confirmation, or appointment process of ACA's leadership   |          |            |         |   |                |                 |
| 2.2  |                       | Merit-based, competitive, and timely selection of the ACA's leadership |          |            |         |   |                |                 |
| 2.3  |                       | Collegial decision making  |          |            |         |   |                |                 |
| 2.4  |                       | Fixed term in office and possibility for renewal                       |          |            |         |   |                |                 |
| 2.5  |                       | Clarity on the grounds for removal from office                         |          |            |         |   |                |                 |
| 3.1  | 3.<br>Resources       | Sufficiency of financial resources                                     |          |            |         |   |                |                 |
| 3.2  |                       | Security and stability of budget                                       |          |            |         |   |                |                 |
| 3.3  |                       | Authority to prepare its own budget                                    |          |            |         |   |                |                 |
| 3.4  |                       | Authority to freely execute its approved budget                        |          |            |         |   |                |                 |
| 3.5  |                       | Autonomy to generate its own financial revenues                        |          |            |         |   |                |                 |
| 3.6  |                       | Oversight over the ACA's financial resources                           |          |            |         |   |                |                 |
| 3.7  |                       | Securing optimal premises and operating conditions                     |          |            |         |   |                |                 |
| 3.8  |                       | Employees' status and their hiring procedures                          |          |            |         |   |                |                 |

| Assessment framework for parliament's relationship to anti-corruption agencies<br>(continued from p35) |                   |  | Scoring  |            |         | Role of parliament given the type of ACA in country (copy-paste values from the main table) |                |                 |
|--|-------------------|--|----------|------------|---------|---|----------------|-----------------|
|  | Instruments       | Indicators   | High (3) | Medium (2) | Low (1) | Lead role   | Oversight role | Weak or no role |
| 4.1  | 4.<br>Reporting   | Submitting annual report to parliament and/or government                   |          |            |         |   |                |                 |
| 4.2  |                   | Structure and content of annual report                                     |          |            |         |   |                |                 |
| 4.3  |                   | Clear parliamentary procedures regarding follow-up to ACA reports          |          |            |         |   |                |                 |
| 4.5  |                   | Parliamentary debate and follow-up actions on ACA reports                  |          |            |         |   |                |                 |
| 4.6  |                   | Authority to submit information and reports at ACA's own initiative        |          |            |         |   |                |                 |
| 5.1  | 5.<br>Cooperation | Existence of designated parliamentary committee on corruption              |          |            |         |   |                |                 |
| 5.2  |                   | Extent of involvement of ACA in parliamentary anti-corruption policy work  |          |            |         |   |                |                 |
| 5.3  |                   | Parliamentary support for ACA's awareness raising role and ACA initiatives |          |            |         |   |                |                 |
| 5.4  |                   | Facilitating inter-institutional cooperation                               |          |            |         |   |                |                 |

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