



BUSINESS CLIMATE DEVELOPMENT STRATEGY

Phase 1 Policy Assessment

EGYPT

DIMENSION II-1

Anti-Corruption

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EXECUTIVE SUMMARY

Government attitudes toward markets and the efficiency of their operations are an essential component of the business climate. It is a well established fact that corruption and excessive bureaucracy and red tape – which lead to fraudulence in public contracts, lack of transparency and trustworthiness, and the political dependence of the judiciary – place a significant economic burden on businesses and keep countries from achieving their economic growth and employment potential. The shift of resources from the public purse to private hands means a loss of funds for much needed public projects such as infrastructure, education, and other public services. Corruption is a major factor in the widening of the income equality gap: elites all too often use their access to political power to manipulate economic decisions which ultimately benefit their own rents.

According to independent observers, Egypt is confronted with both grand and petty corruption. Corporate surveys testify that corruption is a major obstacle to business operations and growth in Egypt. International organisations, too, have persistently pointed to the seriousness of the problem.

Achievements

Egypt has undeniably taken action to strengthen and empower its institutions in the fight against corruption. Such efforts are critical as the country seeks to bring the issue of corruption to the fore and develop effective tools within a strong anti-corruption framework.

Officialdom acknowledges the urgent need to fight corruption

High-ranking Egyptian officials have recently acknowledged that the fight against corruption should be a policy priority. Accordingly, the government has taken steps to improve integrity in public life and business operations. Cabinet Resolution No. 24 of 1 February 2007 put the fight against corruption high on the government's agenda of policy objectives.

Building on a legislative framework which has criminalised bribery and related corruption offences for decades, Egypt ratified the United Nations Convention against Corruption (UNCAC) in early 2005. Ratification binds it to implementing a wide range of legal and institutional anti-corruption provisions.

Egypt has strengthened its institutional anti-corruption arsenal

It was traditionally the role of a certain number of government bodies and agencies to prevent, detect, and prosecute corruption. However, to step up the fight and enhance integrity-related action, additional institutions were created in 2007:

- The Minister of State for Administrative Development set up the Transparency and Integrity Committee (TIC) to study and recommend means and mechanisms of enhancing transparency, accountability, and the fight against corruption at central and local government levels.
- The Ministry of Investment established a Transparency Unit. Supported by the UNDP, its task is to improve the investment climate through legislative amendments that strengthen freedom of information and transparency, raise public awareness and stakeholder engagement, and build capacity and knowledge management.
- The Ministry of Investment put in place a National Contact Point (NCP) after Egypt signed up to the OECD Declaration on International Investment and Multinational Enterprises. The NCP's mandate is to implement the declaration's *Guidelines for Multinational Enterprises*, which contain a chapter on business integrity. The NCP should also assist businesses in developing strong ethical practices in their dealings with the government, other firms, and the public.

Key government departments have cut red tape

Government departments, particular those administering taxation and customs, have undertaken reforms to reduce red tape and enhance service performance. One key move has been the introduction of one-stop shops to streamline company registration procedures. Reform has helped curb the discretionary powers of civil servants, thereby reducing person-to-person contacts with members of the public and business community. This, in turn, has had a positive impact on integrity and anti-corruption. (Section 1.2.6. of Dimension I-1, "Investment Policy and Promotion", discusses the one-stop shops put in place by the investment promotion agency GAFI. Indeed, GAFI and the benefits of its one-stop-shop service are considered throughout that chapter.)

Egypt has joined in international action to fight corruption

Egypt has been involved in a number of international initiatives and projects to strengthen integrity and fight corruption. They include the MENA-OECD Task Force on Anti-Bribery, OECD Good Governance for Development in Arab Countries Initiative, the Arab Anti-Corruption and Integrity Network (ACINET), and the UNDP-POGAR project to support the Ministry of Investment in the fight against corruption. The government's interest in sharing with and learning from their peers demonstrates its desire to address the problem of corruption.

Challenges

Whereas the Egyptian government is of the view that its legislative and institutional framework is adequate for detecting, investigating, and prosecuting corruption offences, the current BCDS assessment concludes that much more can and should be done, particularly as regards political will, legal provisions, and institutional arrangements.

No sign of a nationwide strategy to fight corruption

The government has not developed or agreed to a nationwide anti-corruption strategy which would build on an in-depth stocktaking of corruption and set a clear timetable for action.

The Penal Code is ill equipped for the full range of bribery-related offences

The Egyptian Penal Code fails to take into full account the growth of white-collar crime. Penalties focus on passive bribery, while the prosecution of active bribery and related corruption offences is fraught with difficulty. The Penal Code, for example, provides for very long prison terms and very low fines

(between USD 18 and 360). It does not explicitly state that the bribery of foreigners is an offence and there is no corporate liability. It is also noteworthy that a high number of government officials enjoy immunity from prosecution.

Anti-corruption provisions are enforced only irregularly

The enforcement of anti-corruption provisions is reported to be haphazard. This may be due to an unclear regulatory environment that is ill-defined in scope, does not deter, and takes second place to discretionary decisions by the prosecuting authorities. However, although the MENA-OECD Investment Programme received insufficient information on co-ordination and resource allocation, there are grounds for suspecting that the lines of communication and co-operation between investigation and enforcement units are blurred. It may also be inferred from informal statements that investigation and enforcement authorities lack adequate manpower and technical and financial means to discharge their duties effectively and efficiently.

The authorities have not really sought to raise awareness

The government has made only limited efforts to raise awareness. Its initiatives have not been widely communicated, possibly because of restrictions on freedom of information and inadequate transparency legislation. It is also noteworthy that reforms undertaken to enhance competition in public procurement procedures are not widely publicised.

The government does not appear to consider the private sector as anti-corruption partner

The Egyptian government has barely engaged in any dialogue with non-government stakeholders. The private sector has so far had little opportunity for regular exchanges with the public sector on the legislative environment and best practices in fighting corruption in business. Egyptian civil society and the media are engaged in anti-corruption campaigns, but dialogue with the government is almost non-existent.

Recommendations

A comprehensive national strategy involving all echelons of government

The Egyptian government should consider drawing up and engaging in a comprehensive national strategy to fight bribery and corruption. The highest echelons of the state should commit to such a strategy, which federal, regional and local governments would co-ordinate and implement on the ground. As part of its strategy, the Egyptian government may consider developing and publicising an action plan that sets out clear milestones to chart progress.

Re-establish a culture of integrity

The Egyptian government should re-establish a culture of integrity in society at large. It should join forces with the private sector against corruption. Public awareness of corruption and long-term strategies to educate and inform people about the importance of integrity should be a shared responsibility between government and non-governmental actors.

Anti-corruption agencies should be revitalised and empowered

The role and functions of the different anti-corruption agencies should be streamlined and their lines of communication and co-operation well defined. Some agencies may lack a sense of duty and responsibility in the absence of clearly defined remits. In addition, the human, technical, and financial resources they need to do their job should be determined and allocated to them.

Identify the areas of public administration most prone to corruption

The government should seek to identify those areas of the civil service most prone to the risks of corruption. It should then run an economic simulation to assess the shortfall in the income of each department of the civil service and the losses for the overall civil service budget. It should also estimate how much the country at large loses as it fails to attract foreign investment and misses trade opportunities.

Improve and increase dialogue with business, civil society, and media stakeholders

The government should deepen and widen dialogue with Egyptian business associations, civil society, and the media with a view to defining an appropriate, effective anti-corruption framework and taking action to prevent and fight corruption.

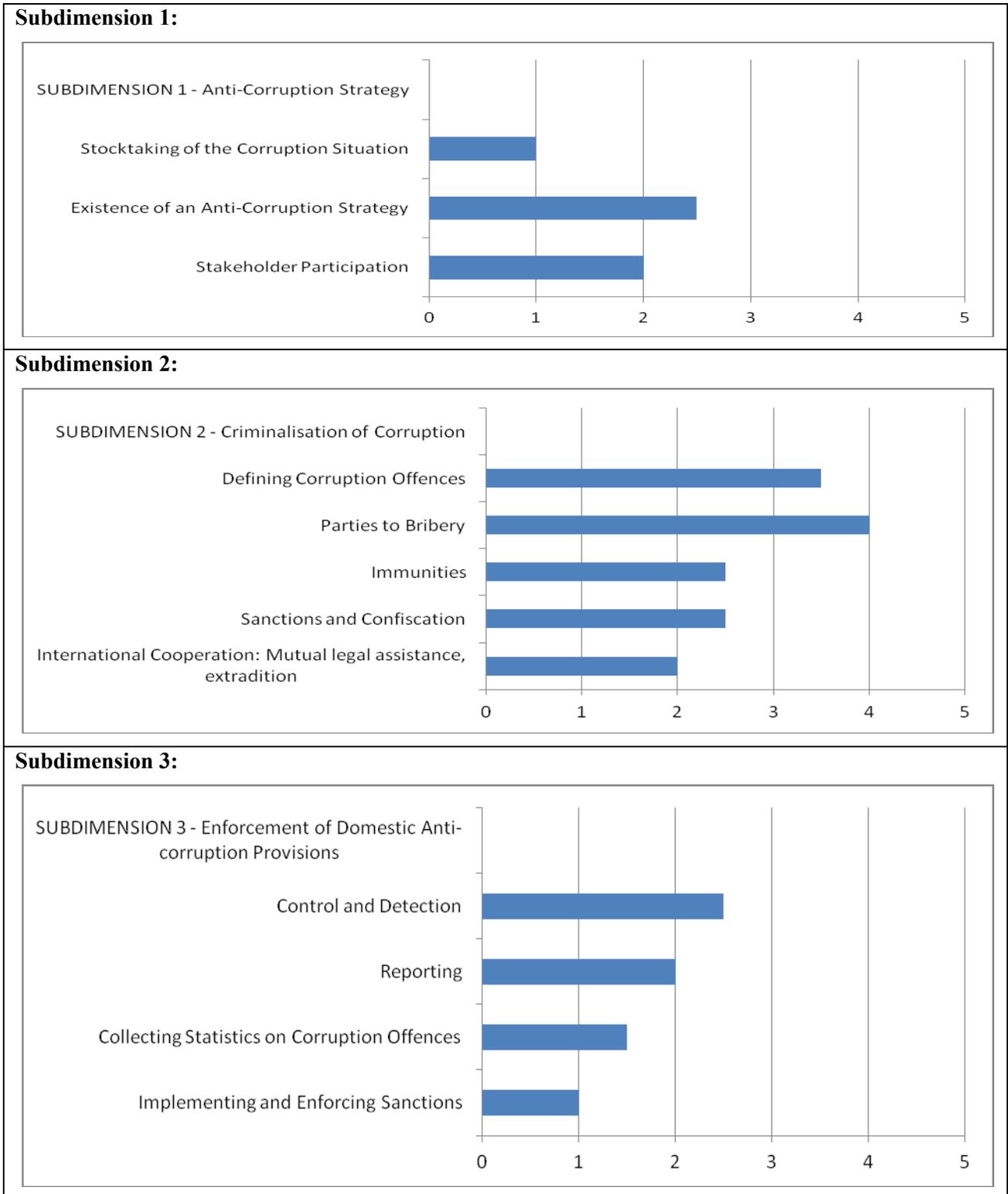
Review Egypt's legal framework against international standards

The government is encouraged to conduct a very detailed review of Egypt's legal framework, benchmarked against the most state-of-the-art international anti-corruption standards. Such a review would certainly help amend legislation and factor into it the most recent developments in white collar crime. The Egyptian government could, notably, avail itself of the OECD's advice to build a functional system of punishments that fit crimes of corruption.

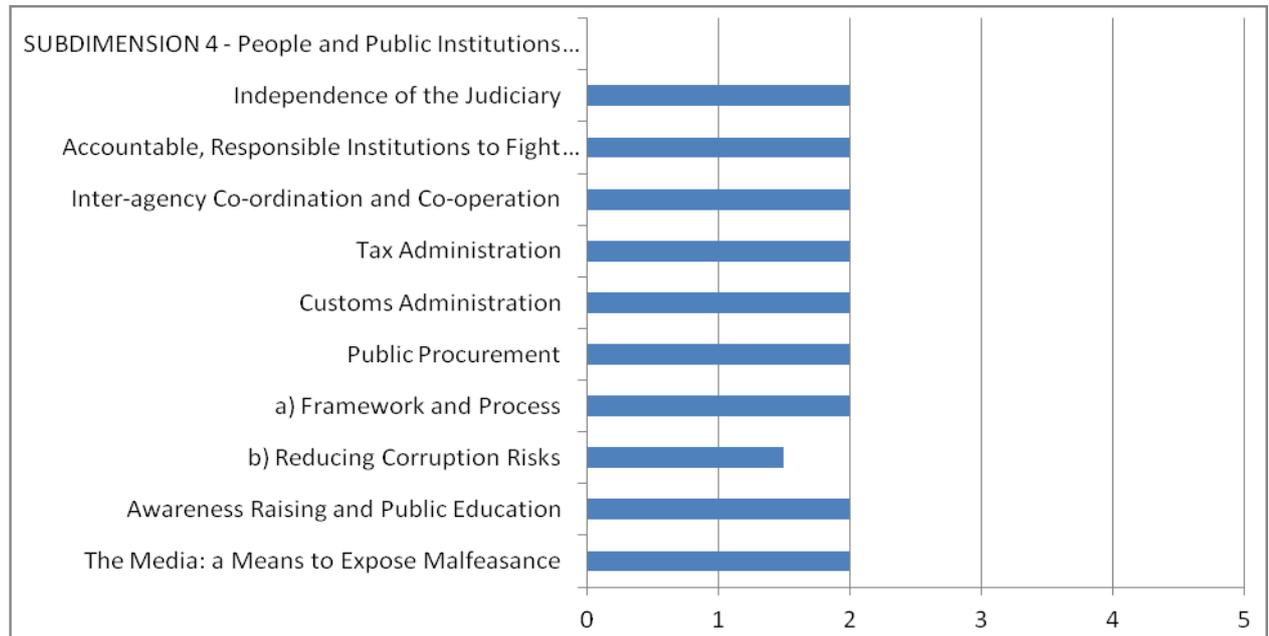
Determine and implement policies in line with international standards and practices

Corruption is not a purely domestic problem. It frequently has international links and ramifications. Egypt's adherence to the UN Convention against Corruption (UNCAC) and other agreements, together with its greater participation in meetings on international integrity and anti-corruption should help the government determine and implement policies and measures compatible with international standards and practices. The OECD would encourage the government to develop adequate means of further institutionalising international legal co-operation. The OECD, together with other international organisations, would be available to assist the Egyptian government in learning about international good practices, thereby bringing it into full compliance with the requirements of UNCAC.

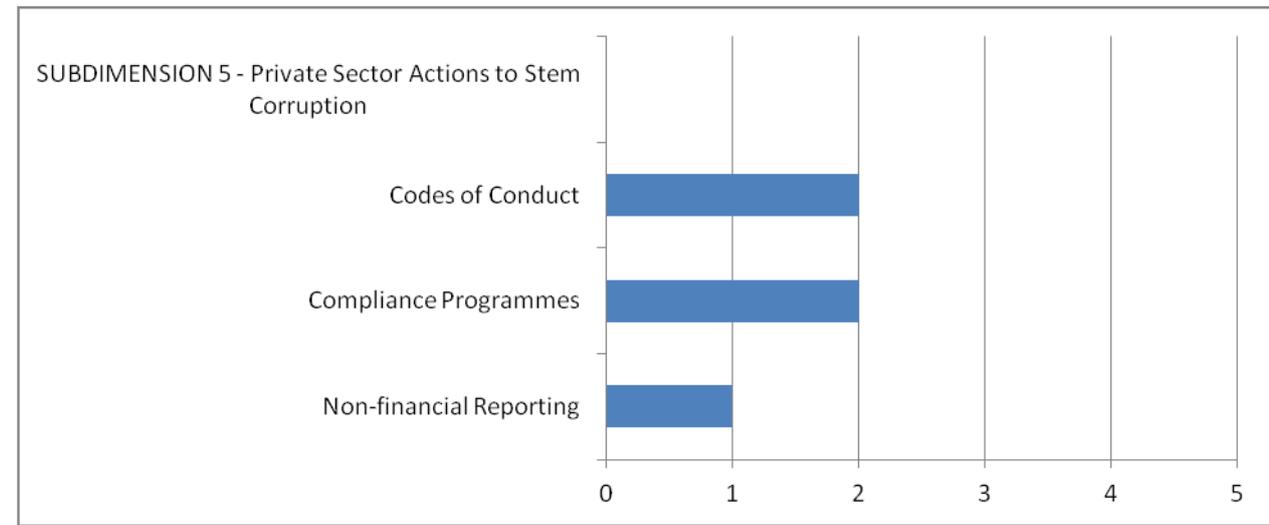
Figure 1. Egypt's scores in the anti-corruption assessment framework



Subdimension 4:



Subdimension 5:



INTRODUCTION

Anti-corruption and business integrity have been identified as critical to a country's development and investment performance. Economic theory, supported by empirical evidence, testifies that bribery and corruption are major deterrents to investment. Indeed, such malpractices create unforeseeable costs for businesses and prevent them from operating on a level playing field. If the regulatory environment is unclear – whether over- or under-regulated – officials may abuse their discretionary powers and seek to enrich themselves through corruption. This has widespread detrimental effects – it increases the cost of doing business, distorts the allocation of resources, and undermines growth.

Real or perceived corruption risks heighten companies' concerns over engaging in business relations. Beyond the direct economic cost corruption represents for companies, it also carries increasing legal risks and can threaten their reputations. Today, companies are bound by international integrity provisions which may have consequences for business operations that reach beyond national boundaries. Companies operating abroad dread being held liable for corrupt behaviour by employees, agents, or subcontractors. Recent highly publicised bribery scandals illustrate how unethical conduct severely affects companies' financial situations through damage to their reputations and increased government enforcement. Moreover, penalties for breaking foreign bribery rules can run into USD millions and are applied even to multinational companies operating worldwide – as recent examples again demonstrate. Corruption risks have become an inescapable reality in the minds of executives who are increasingly concerned to ensure business integrity in their operations and in the markets where they intervene.

The *Framework to Assess Anti-Corruption Policies and Practice* describes a structure and provides a set of indicators that serve as a basis for the Business Climate Development Strategy (BCDS).

This evaluation of Egyptian policies and practices in fighting corruption is the result of a collaborative effort. Assessment, which ran from April to October 2009, is based on a series of contributions from government representatives who voluntarily engaged in the BCDS. The MENA-OECD Investment Programme also obtained information from Egyptian consultants and carried out interviews with Egyptian and foreign non-governmental representatives to compare findings. Finally, the OECD Secretariat engaged in some independent research.

The draft evaluation was presented to the Government of Egypt on 12 October 2009. The revised anti-corruption chapter takes into account the comments and observations made during and following that meeting.

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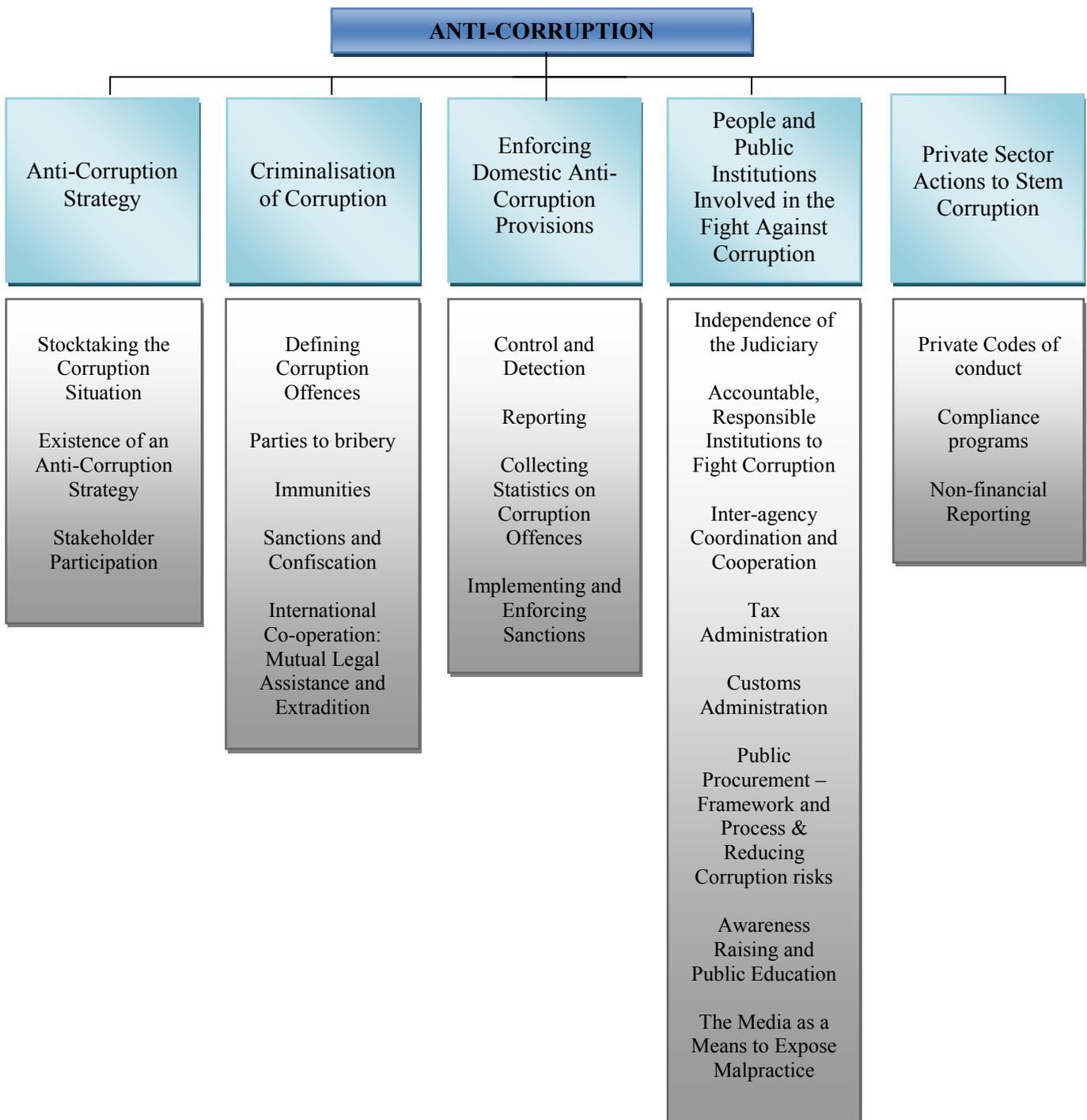
SCOPE OF THE FRAMEWORK TO ASSESS ANTI-CORRUPTION POLICIES AND PRACTICES

Egypt's anti-corruption policies and programmes have been assessed against the framework set out in Figure 1 below. The framework identifies five key pillars, each of which comprises a set of indicators. Combinations of the good practices in the elements listed under each of the pillars – anti-corruption strategy, criminalisation of corruption, enforcement, people and institutions, as well as preventive private sector measures – are generally considered essential to fighting corruption in business transactions.

The framework is designed to give an overall picture of the situation in Egypt, rather than to capture every detail of the country's anti-corruption policy. For instance, some particularities of domestic legislation may not be reflected. The focus of the work is on public officials' corruption. Moreover, while integrity in public life is undeniably a prerequisite for public trust and a keystone of good governance, the chapter does not aim at a comprehensive review of the legal, regulatory, and procedural framework which governments may establish to enhance transparency and integrity and prevent corruption.

The framework is built on five major pillars, of which the first four relate to government actions. The chapter leads with what may be termed a "strategy" to fight corruption. It then reviews the domestic provisions introduced to combat criminal corruption and major related crimes. Then it looks at the extent to which the government has been able to enforce its anti-corruption policy. Consideration is also given, in this context, to human and institutional approaches which will have to be compatible with a country's anti-corruption strategy and provisions. The fifth dimension briefly looks at what the private sector can do to prevent bribery and corruption.

Figure 2. The anti-corruption framework



1.1. Anti-Corruption Strategy

Considerable attention has been given to the fight against corruption over the last decade. Countries have negotiated and ratified a variety of regional and international anti-corruption conventions, complemented by a number of private sector initiatives. Implementing those different, complementary undertakings increasingly underlines the difficulty and complexity of designing efficient and effective anti-corruption policies. Fighting corruption clearly is a challenge: while the detrimental impact of corruption on the economy and societies at large has been documented, it is very difficult to estimate the extent and degree of malpractice. Identifying and sanctioning the people involved is commonly recognised as an extremely complex task.

Fighting corruption is a long-term undertaking which, first and foremost, calls for political recognition of the problem, the political will and determination to come to grips with it, and the development of a variety of well-designed countermeasures. Governments who genuinely commit to fighting corruption will want to engage in policy diagnoses and public campaigns with all stakeholders in order to develop a solid anti-corruption strategy. On this basis they can develop and put in place appropriate measures to ensure that goods and services are obtained in a transparent and non-discriminatory manner.

1.1.1. Stocktaking the Corruption Situation

Due to the very secretive nature of acts of corruption, it is almost impossible to determine its exact magnitude in a given environment. Nonetheless governments must seek evidence of degrees and patterns of corruption in order to design, monitor, and adjust their anti-corruption strategies and policies. Generally, questionnaire-based perception surveys are used to approximate the extent of corruption. Public opinion polls can be complemented by sociological surveys, risk assessment studies, and statistical data on the enforcement of anti-corruption laws. These different tools may help to establish a diagnosis of areas most exposed to the risk of corruption and bring to light those where the government should act to enhance integrity. Assessments of corruption call for regular reviews to measure the effectiveness of remedial action.

In Egypt, non-government perception surveys report that corruption is widespread and that it is part of daily life (see below, Box 1). Corruption allegations are frequent in the media and people often speak of the practice as affecting all parts of society. According to observers, Egypt is faced both grand and petty corruption. The phenomenon results in part from and builds on the fact that a very large part of the Egyptian economy is informal.¹

Yet the government does not appear to have carried out any overall assessment of corruption in Egypt or mandated an experienced institution to do so. Certainly, the Ministry of Investment, external consultants, and the independent sources interviewed in the context of the BCDS are not aware of any assessment.

Nevertheless, there have been some recent governmental initiatives to assess the corruption situation. Building on the 2007 modernisation report, *Egypt – On the March of Development*:

- The Egyptian Cabinet's Information and Decision Support Centre (IDSC) created the Egyptian Corruption Perception Index in May 2007. Information on this initiative contained in the publicly available copy of *Egypt – On the March of Development* refers only to different levels of awareness of corruption among various categories of the population. Neither activity-, sector-, nor civil-service-specific corruption risks seem to have been identified or assessed. Nor does *Egypt – On the March of Development* mention any players exposed to specific risks. There is no public reference to any reassessment or monitoring of corruption by the IDSC.
- The Ministry of Administrative Development created the Transparency and Integrity Committee (TIC) to examine mechanisms for enhancing transparency in Egypt. Two annual reports were

issued. The second one, available in English on the ministry's website, refers to the negative economic and social impacts of corruption and makes recommendations on legal and institutional amendments.²

Box 1. Observations from non-governmental perception surveys

According to corruption perception assessments by non-governmental organisations (NGOs), corruption is widespread and has increased over the past decade. Egypt's ranking in Transparency International's *Corruption Perception Index* (TI's CPI) has deteriorated since 2001-6. Global Integrity 2008 and the Heritage Foundation's 2009 *Index of Economic Freedom* echo this observation.³ Transparency International also estimates that the country is facing major challenges in combating both grand and petty corruption.

BCDS Score for Stocktaking the Corruption Situation: 1

In the context of a general impression of widespread corruption, the government is encouraged to carry out a meaningful survey assessing the actual level of corruption in business and identifying sectors and administrations most exposed to it. On one hand, such a survey would help to confirm or dispel the general perception of corruption being rife. On the other hand, it would increase the government's understanding of the issue. Mapping corruption risks at administrative and sector levels would allow the government to develop an informed strategy, determine priority areas of action, and develop the means to combat corruption. It would also provide a framework for measuring progress over time. Institutions created in 2007 and 2008 should be strengthened through a capacity-building programme, which should include training.

1.1.2. The Existence of an Anti-Corruption Strategy

Countries, in particular those faced with widespread corruption, should make the fight against corruption a national priority. A clear strategy spelling out a strong, precise message about the government's priorities can help ensure follow-up on public declarations. Furthermore, practical action plans are an effective means to support successful implementation. Such plans set deadlines, outline means for implementation, and can also identify specific areas (e.g. tax, customs or public procurement) exposed to higher corruption risks for which targeted provisions should be developed.

The Egyptian President, the Prime Minister, and some members of government have admitted that corruption is a serious problem and expressed their commitment to combating bribery on various occasions (e.g. speeches before the UNDP, OECD, and the French Ministry of Justice).

However, Egypt has not actually formulated a single strategy of its own to fight corruption, although Cabinet Resolution No. 24 of 1 February 2007 has listed the fight against corruption as a policy objective high on the government's agenda. Actions taken so far notably include the ratification of the United Nations Convention against Corruption (UNCAC) in 2005⁴ and active participation in the MENA-OECD Task Force on Anti-Bribery, established in June 2005. The United Nations Development Programme (UNDP) set up an ambitious project in 2006 to support "the Ministry of Investment in enhancing transparency and fighting corruption" over the period 2007-11". This project, the results of which are pending, should help the Ministry of Investment improve its relations with the private sector and foreign investors.⁵ In 2007, Egypt hosted a ministerial-level meeting of the OECD Good Governance for Development in Arab Countries Initiative devoted to civil service integrity.⁶ Egypt is also a member of the Arab Anti-Corruption and Integrity Network (ACINET).⁷

All such initiatives contribute to an increase in awareness at the highest level and to exchanges with peers on best practices and challenges in fighting corruption.

A number of executive and judiciary institutions are charged with preventing or repressing corruption. They include the Administrative Authority Council, the Central Auditing Agency, the Administrative Prosecution Authority, and the Public Funds Prosecution (see Appendix 2.2). The TIC, created to propose a national strategy and appropriate legal and administrative frameworks against corruption, is not sufficiently independent and has no nationwide mandate or budget.

BCDS Score for Anti-Corruption Strategy: 2.5

To achieve a higher score, the government should define a nationwide strategy which would build on a long-term action plan bringing together all stakeholder public agencies and ministries along the lines of Cabinet Resolution No. 24. If such an action plan is to be effective, it is critical that it should define and implement clear lines of command, communication, and co-operation. Furthermore, the highest ranks of government must publicly commit to the strategy and regularly restate their commitment.

1.1.3. Stakeholder Participation

Governments cannot fight bribery and corruption alone. The involvement of different stakeholders (general public, associations, NGOs, civil society) is paramount, especially when accountability mechanisms for public institutions are still being developed. Stakeholder participation involves informing the public about the government's anti-corruption measures, responding to public inquiries, holding public consultations, or involving civil society representatives in the development of policy actions or legal provisions.

The Egyptian government has started to engage in more regular awareness campaigns and public consultations with civil society and the general public. For example, the government has contacts with NGOs working on the issue, such as the Centre for International Private Enterprise (CIPE) and Transparency International. NGO representatives also participate in TIC meetings. The Egyptians Against Corruption network (EAC), created in 2006 by Egyptian citizens, is also active on the Internet but is not reported to engage in actions with the government.⁸ Interaction with stakeholders could be more regular.

Egyptian civil society and the media have launched a number of independent anti-corruption campaigns. However, Law No. 84/2002 restricts NGOs' scope of action, while Article 188 of the Penal Code limits media involvement by levying heavy fines and penalties for corruption allegations (see below, 1.4.8. "The Media: a Means to Expose Malpractice").

BCDS Score for Stakeholder Participation: 2

Information about possible anti-corruption action by the government is mostly confidential and the government has made limited efforts to engage with or associate non-government stakeholders in discussions or action to fight corruption. The government should seriously consider setting up structured ways of communicating with the greater public, as well as establishing formal structures to engage in regular dialogue and systematic consultations with non-governmental stakeholders.

Increased stakeholder participation and awareness, including media involvement, is of vital importance in fighting corruption effectively. In order to enhance the Egyptian consultation process and stay abreast of latest international developments in integrity standards and business needs, the government should also involve multinational companies and international organisations that are well versed in the fight against corruption. The creation of a sound business environment and the transmission of codes of ethics to the Egyptian market will increase accountability, decrease risks, and actually lower many firms' production costs.

1.2. Criminalisation of Corruption

In the fight against corruption, one priority is a coherent legal framework which identifies bribery and related acts as criminal offences under domestic law. Criminalisation has a clear and potentially strong impact both inside and outside the criminal law sphere. The legal framework needs to be accessible and well publicised.

As part of countries' commitments to international anti-corruption instruments most, if not all, need to bring their domestic legislation into conformity with agreed standards. UNCAC is a key point of departure for anti-corruption efforts in the Arab region. Other international instruments – *e.g.* the 2003 African Union Convention on Preventing and Combating Corruption and the 1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions – may be relevant, as they are open for accession and also impact on international business operations. Furthermore, international efforts and instruments address malpractice frequently associated with such criminal activities as money laundering, transnational organised crime, and the illicit trafficking of narcotics.

Pursuant to the Constitution, Islamic case-law jurisprudence is the main source of Egyptian law. However, it also draws on Napoleonic codes and English law principles. The Penal Code was enacted in 1937.

Egypt is a party to UNCAC (February 2005) and to the United Nations Convention against Transnational Organised Crime (March 2004), as well as the UN Convention against Illicit Traffic in Narcotic Drugs (1991). Egypt is also a founding member of the Middle East and North African Financial Action Task Force (MENAFATF). This is a regional, intergovernmental co-operation body that focuses on money laundering and financing of terrorism and is affiliated to the Financial Action Task Force (FATF).

Appendix 1 supplements this section.

1.2.1. Defining Corruption Offences

To be able to seek out new business opportunities in all confidence without exposing themselves to undue risk, companies need to understand the legislative framework in which they operate. The offence of bribery should be clearly defined in law and cover the act of “giving, offering, or promising” bribes (active bribery) as well as “taking, requesting and accepting” them (passive bribery). The offence should explicitly cover financial and other undue advantages of an economic or non-material nature (*e.g.* money or loans, as well as holidays, entertainment, and career improvements). Other corrupt practices which should be criminalised include influence peddling, embezzlement, misappropriation or diversion of property, funds, securities, or any other item of value entrusted to a public official in his or her official capacity, for the official's benefit or the benefit of others.

Corruption offences are mostly set out in the Egyptian Penal Code, which defines bribery (Articles 103-112) as a serious offence falling under the category of crimes against the civil service and public interest. (Other relevant provisions listed in Appendix 1 are not codified.) There does not appear to be any official English or French translation of the Penal Code. Ensuing observations are thus based on unofficial translations which may sometimes be contradictory.

The Egyptian Penal Code's provisions cover the passive and active bribery of public officials. The latest amendments to these provisions were made in 1962. They focus on passive corruption, which reflects the Egyptian government's concern at the time to prevent public employees from abusing their authority for private benefit.

Active bribery provisions are very succinct and only consider active bribery insofar as it is a pendant to passive offences. Article 107b, for example, states: “The briber and mediator shall be punished with the penalty prescribed for the bribe taker.” Articles 109b-1 and 103-105b reveal a similar approach. It is not clear whether active bribery is punished in line with the sanction incurred by the public official or with the sentence effectively pronounced. (For further details, see Appendix 1.1.1).

The Penal Code contains no provisions for criminalising the bribery of foreign public officials: Article 111 does not specifically consider staff from public international organisations or foreign officials as public officials. It is difficult to agree with those Egyptian interlocutors who consider that bribery of foreign public officials can be addressed and criminalised through Articles 2 and 3 of the Penal Code whose nationality and territoriality principles apply to Egyptian criminal law (see Appendix 1.1.2).

The Penal Code does not explicitly cover private corruption. Nevertheless, the language of Article 109b-1 does seem to indicate that corruption between two private persons could be penalised. The wording could be interpreted by the courts as applying to two private persons: “If the offer by whomsoever is made to anyone else but a public official, the penalty shall be imprisonment for up to two years or a fine not exceeding EGP 200”. (Underlining by this author for purposes of emphasis.)

Bribes can take the form of both financial and non-financial advantages. Article 107 defines them as: “any benefit obtained, accepted, or learned of by the bribe-taker or by the person he appoints to that end, shall be considered as a promise or donation, whatever its name or kind, or whether that benefit is physical or non-physical”.

Other related offence, such as influence-peddling, embezzlement, and diversion of property are also singled out in articles in the Penal Code. (See Appendix 1.2).

The Egyptian government, which last amended corruption-related criminal offences in 1962, is not contemplating any further revision. Egypt’s Prosecutor General, who admitted in an interview that the corrupt practices of the 21st century are difficult to investigate and prosecute due to their interregional and international nexus, considers that the legal framework complies with Egypt’s obligations under UNCAC.

BCDS Score for Defining Corruption-Related Offences: 3.5

Egypt addresses most internationally agreed corruption offences and would deserve a score of 4 benchmarked against the BCDS grid. However, legal provisions are difficult to understand, both for businesses in general and foreign investors in particular, which justifies a score of 3.5. The style, numbering, and structure of the criminal provisions are complex. The supremacy of passive bribery offences and the indirect reference to active bribery make the law difficult to apply.

We invite the Egyptian authorities to seriously consider assessing the scope and effectiveness of their legal provisions. A gap analysis of the Egyptian law and the provisions of UNCAC would probably point to the need to modernise the legal framework and take into account the latest economic criminal practices. Articles 103-112 should, for instance, be clarified and simplified, with active and passive bribery being addressed in separate, parallel articles. The nature of the benefits accruing from bribery should also be specified. Finally, the bribery of foreign public officials must be made a criminal offence in compliance with UNCAC if Egypt wishes to apply for accession to other instruments such as the 1997 OECD Convention on Combating Bribery in International Business Transactions.

Lastly, the Egyptian authorities could consider publishing official translations of the Penal Code and syntheses of relevant case law in international business languages.

1.2.2. Parties to Bribery

The law needs to clearly define the meaning of “public official” when referring to the active or passive bribery of public officials. This will avoid uncertainty, since the absence of a clear definition may make the scope of an offence uncertain. The law should encompass all categories of officials to include any person holding a legislative, administrative, or judicial office, whether appointed or elected, and any person exercising a public function, whether in a public body or a public enterprise.

Corrupt transactions generally involve a high level of confidentiality and secrecy, involving persons other than the bribers (*i.e.* persons, natural or legal, seeking a business advantage) and the bribe-takers (officials providing the business advantage). To ensure an arms-length distance between bribers and bribed, bribes are frequently transferred to designated third parties (spouses, children, political parties) through agents, intermediaries, consultants, etc. In order to prevent the involvement of third parties, their role in corrupt transactions should be regulated and sanctioned.

The Egyptian Penal Code provides a wide definition of “public official” (Article 111). All persons holding a legislative or administrative office, or exercising a public function are included. Persons holding a judicial office are not explicitly mentioned but could fall under Article 111-115 – “any person performing a public service”. As mentioned above, Article 111 does not include foreign public officials.⁹

Articles 103-104b and 106-106A (“for himself or for a third party”) consider third-party beneficiaries as bribery offenders. It is, however, unclear what kind of individual is subject to Article 106, which incriminates passive corruption by “any employee” and, specifically, whether it may apply to private sector employees or is limited to “employees of departments attached to the government” under Article 111. Board members and company representatives of public companies involved in a bribe are also incriminated under Article 106A in the same manner as public officials. (See Appendix 1.1.2)

Bribing through intermediaries is addressed and the intermediaries incriminated (Articles 105bis and 108) unless they act in good faith. (See Appendix 1.1.2)

Egyptian law does not explicitly mention corporate liability. Only natural persons acting as intermediaries may be incriminated (which rules out corporate vehicles).

BCDS Score for Parties to Bribery: 4

The Egyptian Penal Code defines domestic public officials involved in a bribery offence. The law also applies to third-party beneficiaries and intermediaries involved in a bribery offence. This justifies the score of 4 on the BCDS scale.

In order to achieve the maximum score of 5, the Egyptian Criminal Code would need to define “foreign official” (and making the bribing of foreign officials an offence in accordance with UNCAC’s Article 2). If it does so, the Egyptian government is encouraged to draw up an autonomous definition.

It is recommended that the scope of Article 106 should be reviewed (with a more precise definition than “any employee”) and the role of intermediaries in corruption practices in Egypt examined in order to assess the efficiency of current legal provisions. A study of corruption practices involving intermediaries, particularly in public procurement, may illustrate the need for a clearer and more precise definition.

1.2.3. Immunities

Given the hidden nature of corruption offences and the difficulties that often arise out of investigating corruption-related acts, it is important that criminal law provides public anti-corruption players with a clear

understanding of who is subject to criminal liability. There may be exemptions, at least temporarily, through immunities or privileges.

Pursuant to the Egyptian Constitution, immunities apply to a high number of officials: the President, Members of Parliament, judges, provincial governors, cabinet ministers and their deputies. In the event of corruption the President's immunity may be lifted of one-third of Parliament votes in favour (Article 85). As for ministers and members of Parliament, two-thirds of Parliament must approve the lifting of their immunity (Articles 159 and 96). Judges are immune as per Article 65 of the Constitution. Although they may be subject to disciplinary actions, Article 168 states that they may not be revoked.

It is difficult to identify any clear, comprehensive rules on whether statutes of limitation are suspended or interrupted during the time that immunity applies. Corruption cases involving ministers, members of Parliament, and provincial governors were brought to court in 2002 and 2004.¹⁰ Outside observers consider these cases exceptional in light of allegedly widespread grand corruption involving high-level officials. Not a single case involving a judge has been brought before a criminal court.

It would be valuable to know the circumstances in which immunity (whether functional or absolute) applies and the legal conditions under which it may be lifted. This would be of particular use in assessing the extent to which the incrimination of corruption may be misused as a political tool against opponents as reported by various NGOs.

It is also essential to allow a crime to be investigated once immunity has elapsed – periods of limitation do not expire during the term of office of a high-level official.

BCDS Score for Immunities: 2.5

A large number of officials enjoy immunity, but the Constitution specifies conditions for lifting it. However, rules are unclear as to statutes of limitations and standards of investigation beyond the period of immunity. There has been no concrete analysis on whether immunity has enabled any public officials to evade investigation or prosecution in the past. These concerns explain the score of 2.5.

We encourage the Egyptian government to establish clear rules under which immunity applies and to spell out clear, straightforward provisions for the lifting of immunity. In clarifying such rules and provisions, it should also ensure that criminal acts may be investigated and prosecuted upon the lifting of immunity. This means that periods of limitation should be sufficiently long to engage in serious investigations and that they should not run (*i.e.* be suspended or interrupted) during immunity.

1.2.4. Sanctions and Confiscation

To fight corruption effectively, it is essential that the law establishes effective, proportionate, and dissuasive punishment for all crimes. Penalties should be severe and equivalent to those applicable for serious crimes. They should be similar for both active and passive corruption and applicable to all those involved. Agents – and their companies, too – should be considered liable in the event of active corruption. Some countries hold corporations liable to civil and administrative sanctions. Others, and this is the trend in international practice, agree to make them subject to corporate criminal liability.

Legislation also needs to provide intermediate measures to identify, trace, freeze, and seize the proceeds and instruments of corruption, and, ultimately, to confiscate the proceeds. In other words, bribes and any profit therefrom must be confiscated. Confiscated proceeds may be moneys, physical objects (possibly purchased with the proceeds of a bribe), or intangible assets (*e.g.* shares in a company).

Egyptian bribery-related provisions primarily punish the recipient *i.e.* the public officials. This is notably due to historic, moral considerations shared by many other nations who wished to take a firm stand against corrupt practices in public services. Whereas this sanctioning system has been reviewed by many, it is still prevalent in Egypt:

- Penalties for the (bribed) public official and third-party beneficiaries.

Penalties can be life imprisonment and hard labour for the most serious offences. Fines from EGP 100 to 2 000 (EUR 12-240 and USD 18-360 as of September 2009) have not been updated and may seem slight, especially in comparison with the long prison terms. The law also provides for a set of particularly dissuasive ancillary sanctions, such as disbarring an offender from any public position. (See Appendix 1.1.1).

- Penalties for the briber and the intermediary.

With the exception of ancillary sanctions, penalties for bribers and intermediaries are indexed on sentences passed on public officials (Article 107b). It is unclear whether sentences are those served or those pronounced. The financial sanctions seem ridiculous, if measured against the amounts of money at stake in, for example, the payment of a bribe to win an important contract.

- Exemption from punishment

Article 107 provides that: “The briber or the intermediary shall be exempted from punishment, however, if he reports the crime to the authorities or confesses.”¹¹ The intention of this clause is to safeguard the public interest and assist the government in proving acts of corruption. This specific provision applies only to the active briber and is not a general provision of the Penal Code. It gives cause for concern in that it may lead to a serious loophole in enforcement of the law in cases of grand corruption.

- Seizure and confiscation

Because confiscation divests bribers of the proceeds from bribery transactions, it is perhaps the most effective means for deterring and sanctioning the bribery of public officials. Egyptian law provides for the seizure and confiscation of bribes, proceeds, and all advantages resulting therefrom.¹²

- Corporate liability

Legal entities with such complex structures that it is difficult to identify the decision-maker may be involved in bribing public officials. Laws on the liability of legal persons for criminal offences are in a state of flux globally, due to evolution in ways of thinking about companies' responsibility for wrongdoing. It is unclear whether corporate liability might apply in Egypt, as it is not explicitly provided for. The Egyptian government representatives told the MENA-OECD Investment Programme that it might apply, although they were not able to identify which article(s) address(es) the liability of legal persons or which type of liability applies (criminal, civil, or administrative). The government's response suggests that the following factors impair the liability of legal persons in the event of bribery offences: (a) liability is limited to the acts of high-ranking staff like senior managers, executive officers, and directors; (b) the identification, prosecution or conviction of a natural person is required in order to initiate proceedings against that legal person; (c) cases where a legal person bribes on behalf of a related legal person (*e.g.* subsidiary, holding company, members of the same corporate structure) are not covered.

- Ineligibility from public procurement contracts and suspension from future competitive bids

It is unclear from the government's response on corporate liability whether it relates to the sanction of ineligibility from public procurement contracts and suspension from any future competitive bidding. Article 29 of Law 89/1998 enables contracting authorities to withdraw orders from winning contractors. Bribery, fraud, non-compliance with registration and disclosure requirements, and wrongful intermediation are all discretionary grounds for disqualification. As such, cancellation of the award *may* be declared by the contracting agency and the final deposit retained. Companies who have indulged in acts of corruption to win a government contract (directly or through an intermediary) are systematically removed from the register of contractors and suppliers for future competitive bids.

BCDS Score for Sanctions and Confiscation: 2.5

Penal as well as ancillary sanctions are provided for in cases of active and passive bribery. While prison terms seem very harsh, fines are low – particularly for grand corruption. The same may be said of other corruption-related offences. Overall, the effectiveness and dissuasiveness of the sanctions are questionable. There are also doubts over the application of corporate liability.

It is recommended that the Egyptian government review and amend its provisions for punishing corruption. The punishment should fit the crime in cases of natural and legal persons involved in active and passive bribery. The legislator needs to consider both petty and grand corruption. Undoubtedly, a majority of bribery offences in Egypt are petty and involve low-ranking officials. Such offences need not be punishable by very heavy fines. Grand corruption, however, should be sanctioned by heavy financial penalties that reflect the seriousness of the offence (*e.g.* breach of competition provisions or money laundering – see Box 2, below). Moreover, because arguments for the defence offer such room for manoeuvring and misuse, only general lines of defence should be allowed and any bribery-specific defence abolished.

Box 2. How Egypt sanctions breaches of competition and money laundering

Breaches of Competition Law – Law No. 3/2005

- Corporate liability is set forth in Article 2. Managing persons of the legal entity are separately criminally liable under Article 25 if they had knowledge of the acts. The legal person is also jointly liable if the breach was committed by an employee acting in the name of the legal person or on its behalf (Article 25).
- Criminal sanctions for restrictive trade practices or abuse of a dominant position (Article 22) range from EGP 30 000 to 10 million (EUR 3 600 to EUR 1.2 million as of September 2009).
- Confiscation may be ordered, or an fine equivalent to the value of the sum involved in offence (Article 22) may be imposed.

Money Laundering – Law No. 80/2002 as amended by Law No. 78/2003

- **Sanctions for natural persons: pursuant to Article 14, the sanction for laundering proceeds from a corruption crime is a seven-year term of imprisonment and a fine equal to twice the value of the sum of money involved in the crime.**
- **Corporate liability: pursuant to Article 16, a legal entity that commits a money laundering offence shall be jointly liable with its legal representative for the payment of any financial sanctions and damages if the crime was committed by a person who worked within the legal entity and in the name or on behalf of the entity.**
- **Confiscation of seized funds: Article 14 provides for the confiscation of funds in all cases; alternatively a fine of an equivalent amount is imposed.**

1.2.5. International Co-operation: Mutual Legal Assistance and Extradition

Large-scale, or grand, corruption often has an international dimension because:

- the briber or bribe taker is domiciled abroad;
- the offence, in whole or in part, is planned or takes place in one or more foreign countries;
- the proceeds of the crime have been exported;
- the offender has fled the country.

International co-operation and mutual legal assistance are increasingly essential for identifying channels of corruption worldwide and securing evidence. Magistrates may need to make representations to foreign authorities – or vice-versa – in bribery offences with ramifications in a variety of countries.

Parties should use mutually compatible international standards, and effective extradition and mutual legal assistance (MLA) provisions need to be in place. Countries may seek or provide extradition and MLA in corruption cases through different types of arrangements (bilateral and multilateral treaties, conventions, etc.). UNCAC's Chapter IV (Articles 43-50) covers: extradition; transfer of sentenced persons; mutual legal assistance; transfer of criminal proceedings; law enforcement co-operation; joint investigations; and special investigative techniques.

The jurisdictional scope of Egypt's Penal Law is wide in that it applies the nationality and territoriality principles of jurisdiction (see Appendix 1.1). Egyptian nationals charged with crimes in other countries may thus be prosecuted by domestic authorities under Egyptian law. Bribery of foreign public officials not being explicitly covered by Egypt's Penal Code, there is no legal basis for international co-operation on this matter.

The Prosecutor General told the MENA-OECD Investment Programme that Egypt had a weak legal basis on which to engage in international co-operation, as it is party to only a very few bilateral agreements allowing it to do so. The Prosecutor General also confirmed that dual criminality prevails – *i.e.* co-operation is refused if the requesting state investigates an offence that does not exist in the state to which it makes its request. He also noted that all requests have to follow the formal co-operation procedure. He reported that comity – deferral out of courtesy or goodwill and outside any international obligation – had been used once in an important Egyptian case where assistance had been sought from an OECD country that had provided information on money flows. No data on the extent of the use of comity was provided – particularly in relation to assistance requests by foreign countries seeking information from Egypt. According to a study prepared for the United Nations Development Programme on Governance in the Arab Region (POGAR), the Egyptian Prosecutor General has a special office for international co-operation.¹³ The office's functions are unspecified.

As the case mentioned by Egypt's Prosecutor General confirms, access to financial information is of paramount importance for the effective investigation of corruption crimes. As such, bank secrecy may have to be lifted when international co-operation is sought. From the various responses collected, bank secrecy is lifted only in cases related to money laundering. (The law on money laundering also explicitly provides for mutual legal assistance and international co-operation, pursuant to Article 13 of the United Nations Convention to Combat Transnational Organised Crime.) The Legislative Committee of the National Council for Human Rights concluded in its 2006-7 report, published in August 2009, that Egyptian law was inefficient in matters of international co-operation, recovery of funds, and access to information.¹⁴

BCDS Score for International Co-operation: 2

The Prosecutor General's report on co-operation with other states in the fight against corruption indicates that the Egyptian government has not yet transposed the UNCAC provisions on international co-operation and extradition into domestic law and that Egypt's current provisions are inadequate for addressing grand corruption with any sort of foreign component. Egypt does have a legal basis on which it can co-operate internationally. However, it is rather formal and there may be a high risk that statutes of limitation elapse while co-operation is still being sought from Egypt.

It would be appropriate to list and publicise binding international conventions governing mutual legal assistance and extradition and conduct a statistical study with the Ministry of Justice on their enforcement. The findings could well lead to a common view that the government should amend its current provisions to live up to Egypt's international commitments in the fight against corruption.

1.3. Enforcing Domestic Anti-Corruption Provisions

Government strategies and provisions in criminal, administrative, and civil law can successfully fight corruption only if they are effectively enforced. A country's enforcement efforts may be measured by the statistics it collects and how regularly it analyses data related to the investigation and prosecution of corruption offences. Detection and investigation rely heavily on witnesses and whistle-blowers, who also need protection. Public officials, particularly those from investigative and enforcement authorities, must be familiar with the law's anti-corruption provisions.

1.3.1 Control and Detection

In order to erect barriers against corruption, it is key to ensure that ethical standards are well established and familiar to public officials and employees. To raise awareness of standards, government offices may adopt ethical codes and put in place training seminars (see 1.4.7. "Awareness Raising, Public Education"). In addition, they should deploy internal control and detection mechanisms. Such mechanisms should include assessments of those activities or functions most exposed to corruption risks, and the development and adoption of tools and procedures to investigate and detect corruption.

Internal control and investigative units in the civil service can play an important role in uncovering corruption offences by public officials. While internal units may have the right to enforce administrative law, only the transfer of information to law enforcement agencies may lead to prosecution.

The Egyptian authorities report that internal control and law enforcement mechanisms have been introduced in the civil service through investigative units that have been set up to prevent, uncover, and sometimes report corruption cases. The MENA-OECD Investment Programme observes that Egypt has created a series of agencies empowered to prevent, *i.e.* detect and report, and enforce, *i.e.* investigate (see Appendix 2.1). The internal reporting mechanism for public sector corruption is reported to have an experienced full-time staff and to receive regular funding.¹⁵

- Institutional arrangements involve different levels of government. The law has, for example, established prevention and investigative bodies like the Administrative Control Authority (under the authority of the Prime Minister) and the Central Auditing Organisation, which answers to the President. They oversee cases related to public administration corruption, while another body, the Illegal Gains Department (under the authority of the Ministry of Justice), deals with illegal incomes.
- Internal audit and law enforcement mechanisms have been established through investigative units within the Cabinet and the Ministry of Justice to uncover and investigate corruption cases. A specialised unit within the police force (the Public Funds Investigation Police under the authority of the Ministry of Interior) has been established to undertake investigations and make arrests in cases related to public assets and budgets.
- Detection tools and procedures have been introduced in the form of reporting on financial status and incomes (Administrative Control Authority, Illegal Gains Department). Asset disclosures have been reported to be ineffective or frequently falsified.¹⁶

BCDS Score for Control and Detection: 2.5

The picture that emerges is mixed. The MENA-OECD Investment Programme notes some efforts by the Egyptian civil service to target corruption and that certain control and detection mechanisms have been

established. It also seems that internal investigations have occasionally been initiated on the grounds of suspicion of corruption. That said, it is questionable whether all important government offices act on a regular basis and whether they introduce adequate mechanisms, tools, and procedures systematically.

Egypt should direct its efforts towards establishing control units in all relevant government departments and adopting and strengthening prevention and detection tools. Finally, it is important to establish clear lines of command and communication for reporting serious suspicions of corruption to law enforcement agencies.

1.3.2. Reporting

In order to facilitate investigation and the collection of evidence, people should be encouraged to report useful information to competent authorities. Putting in place an internal reporting mechanism is an effective means to this end, especially if all public officials are required to use it. Whistle-blowing (*i.e.* the act of raising concern about the misconduct of an official within an organisation) is a key element of good governance, transparency, and accountability. Reporting by competitors, employees, or other citizens, including the media, is also a helpful source of information and should be facilitated. The effectiveness of reporting often depends on informers feeling secure that they will benefit from adequate protection from acts of retaliation.

Three Egyptian institutions – the Administrative Control Authority, the Administrative Prosecution Authority and the Illegal Gains Department – have set up reporting mechanisms.

Citizens and private and public sector employees may report to the Illegal Gains Department, as well as to a newly created public complaints hotline (Citizens Relations Management) within the Ministry of Administrative Development.¹⁷ However, there is no specific reporting obligation outside the general rule of Articles 25 and 26 of the Egyptian Code of Criminal Procedure allowing (or requiring) public officials to report information on a crime.¹⁸

Furthermore, Egyptian Law No. 2/1977 provides that authors of reports face prosecution for defamation charges if the allegations they make are found to be false or inaccurate. Reports may be sanctioned by a minimum six-month period of imprisonment and fines of between EGP 100 and 500 (EUR 12-60, USD 18-90 as of September 2009).¹⁹ During the MENA-OECD Investment Programme's on-site visit to Egypt, it was reported that this law was a serious deterrent to reporting misdeeds.²⁰ Another deterrent reported is the slowness of the Illegal Gains Department.

Egyptian law restricts disclosure of information. As underlined in the government's response, some essential information is not available to all civil service departments. Information produced and available to some departments is not disclosed to oversight and monitoring agencies. For example, the Central Audit Organisation may make disclosures only to the President and the Parliament. Moreover, the Law on Civil Servants – No. 47/1978 – requires prior written authorisation for public officials to disclose information or make statements about their professional duties.²¹

There is increased pressure by officials and civil society to adopt an information disclosure law, which is reported to be in the drafting stage.²²

BCDS Score for Reporting: 2

The Egyptian government seems to have set up some mechanisms to protect whistle-blowers. However, it was not possible to identify a coherent, well-established reporting system. On the one hand, there are no clear guidelines or provisions to adequately inform public officials of the process for reporting suspicion of wrongdoing (under which circumstances and to whom to report). On the other hand, reporting

can clearly lead to sanctions by law. The legal framework currently deters reporting by public officials and citizens rather than encouraging them.

The Egyptian government needs to reconsider the current reporting mechanism. The MENA-OECD Investment Programme believes that it is of the utmost importance for the efficiency of the whole anti-corruption system to adopt legislative provisions and procedures which protect whistle-blowers, witnesses, and experts who provide testimonies (and their friends and relatives). This may entail the abolition or amendment of Law No. 2/1977.

Citizens should be informed of their reporting rights, notably through information campaigns and guidelines. Whistle-blowing provisions and mechanisms need, in general, to be effectively implemented for citizens to enter the fight against corruption. Furthermore, the MENA-OECD Investment Programme supports the recent request that the authorities pass legislation on transparency and disclosure of information which would grant investigative and prosecuting authorities the power to access information.

1.3.3. Collecting Statistics on Corruption Offences

The collection and dissemination of statistics on corruption offences is important for many reasons. Statistics allow a country to demonstrate its commitment and to substantiate its practical efforts to fight bribery and corruption. Statistics also enable effective evaluation of the implementation and enforcement of domestic anti-corruption provisions. Information about the number of cases that progress beyond initial investigation to the stage of formal charges provides especially valuable information about enforcement.

The Egyptian government has reported that statistics do exist. However, no elements were ever provided and no data is publicly available on corruption-related investigations, prosecutions, or the enforcement of sanctions for corruption offences.²³ The government reported that institutions' low material resources and insufficiently trained personnel impede the collection of statistics. Providing institutions with better financial and material resources and training programs may be necessary.

Egyptian civil society initiatives seeking to establish statistics are intermittent and have proven difficult. Media reports are useful for drawing attention to corruption, though in the absence of any public information they may obviously over- or underestimate matters.²⁴

BCDS Score Collecting Statistics on Corruption Offences: 1.5

Although the authorities collect general data, much information remains confidential, making it impossible to estimate corruption offences as a percentage of all offences. Nor is it possible to determine the types of offences concerned.

In order to improve their score, the Egyptian authorities are invited to collect data that:

- differentiates between economic and corruption crimes in order to help determine what kinds of crimes are committed;
- is divided into economic sector/civil service categories;
- includes enforcement decisions and sanctions.

Comprehensive, concerted statistical data collection would also allow Egypt to live up to its commitments as a signatory of UNCAC (Articles 46 *et seq.* on the collection, exchange, and analysis of information on corruption).

1.3.4 Implementing and Enforcing Sanctions

The ultimate deterrent to bribery is a clear regulatory framework that is effectively enforced with equal attention to the enforcement of both administrative and criminal sanctions. In a discretionary environment, laws are frequently not, or only partially, applied. The probability that misdeeds go undetected and unpunished is consequently high, which imparts a sense of impunity to intermediaries.

The United Nations suggest that the deterioration of the corruption situation in Egypt is aggravated by the non-enforcement or improper application of the law.²⁵ No official data are available on the anti-bribery work of the Egyptian judicial system (e.g. how many offences are investigated and prosecuted, whether local courts regularly impose sanctions). Such information may however be essential for evaluating – and developing, if necessary – a policy in this area.

In the absence of any data on law enforcement – corruption offences that are prosecuted or punished – it is difficult to assess the extent to which anti-bribery laws are actually implemented in Egypt. However, comments made by various interlocutors during the MENA-OECD Investment Programme's on-site visit in June 2009 suggest that the number of prosecutions is relatively limited.

Interlocutors noted that the limited capacities of existing law enforcement institutions – in particular, legal and police detection mechanisms – currently impede enforcement. They suggested that effective enforcement would depend heavily on building these capacities, which obviously may take some time.

As mentioned in Section 1.2 “Criminalisation of Corruption”, bribers who report or confess their wrongdoing may be exempted from prosecution and punishment (Articles 107b and 108). It is open to question, however, whether bribers frequently use this provision to their advantage. If they do, it may explain the relatively small number of people allegedly prosecuted for active bribery. When investigations are initiated, company employees or representatives accused of paying a bribe seem to succeed in negotiating exemptions in return for their co-operation, while corrupt public officials are convicted.²⁶

BCDS Score for the Implementing and Enforcing Sanctions: 1

To assess whether anti-corruption provisions are enforced, it would be useful to conduct quantitative and qualitative assessments of the offences prosecuted, the sanctions imposed, and the effectiveness of their enforcement. In the absence of such an assessment, Egypt receives the low score of 1.

In order to provide a clearer picture of the implementation and enforcement of sanctions for crimes of corruption, it is recommended that the Egyptian authorities be more transparent. Entities in charge of the fight against corruption are, furthermore, encouraged to conduct regular analyses of the corruption offences prosecuted, the sanctions imposed, and the effectiveness of their enforcement. They should also communicate the results of their assessments.

Initial analysis may confirm the view that there is a strong need for capacity building. Although this may take some time, the experience and good practices of other countries could provide an excellent basis for enforcement institutions and, in particular, for legal and police detection mechanisms.

1.4. People and Public Institutions Involved in the Fight against Corruption

In order to effectively fight corruption, policy statements and strategies need to be supported by the allocation of adequate means and resources. In concrete terms, this means that responsible institutions need to be designated, and that within those institutions, competent personnel need to be tasked with ensuring the effective and consistent application of anti-corruption laws and regulations. Furthermore, adequate financial means, training, and technical resources need to be provided to the institutions mandated with fighting corruption.

1.4.1. Independence of the Judiciary

An effective anti-corruption apparatus builds on an independent judiciary whose actions are free from political influence or the risk of corruption. In addition, a conflict serious enough to come before a court should be handled by an authority that is “competent, independent and impartial” and not be influenced by considerations of economic or political interest. Constitutional provisions and formal assurance of the separation of the judicial branch from the government are a common means by which states guarantee the judiciary’s independence. But other elements that should be taken into consideration include: a) judges’ independence from each other; b) sufficient training, salaries, pensions, and other benefits of office; c) the accountability of officials in the judiciary.

The Egyptian Constitution establishes the independence of the judiciary (Article 165) which should protect the rights and freedoms of the people and of Egyptian institutions. Cases brought to court are subject to prosecutorial discretion: the initiation of proceedings is left up to the sole appreciation of the chief prosecutor (Article 179 of the Constitution). The attorneys general, district attorneys, and public prosecution officers are appointed by the President and answer to the Ministry of Justice. It has been reported that cases brought before the courts are sometimes politically motivated, with the executive determining the direction, pace, and outcome of cases.

Complaints against judges may be submitted to the Ministry of Justice who can challenge their integrity. Independent reports, such as those from Transparency International or Global Integrity, reveal practical and bureaucratic impediments to the effectiveness of these complaints.

Egyptian sources reported to the OECD Secretariat that an independent judiciary with accountable practices would create a sense of confidence within the public and that an thorough, effective justice system would encourage Egyptian citizens to believe in their right to voice their concerns about the wrongdoings of corrupt officials. It was deemed particularly important that judges should be able to investigate and prosecute without undergoing any external interference.

Information on the allocation of resources, training, salaries, and the pensions system was not made available. Budgets have been increased in the past five years and salaries raised.²⁷ Perception reports do not generally mention the judiciary as a corrupt institution, despite the low salaries.

BCDS Score for Independent and Accountable Judiciary: 2

From information obtained, the Egypt judiciary appears to enjoy the necessary formal independence, although reports suggest some level of undue *de facto* pressure which can alter the efficiency of the anti-corruption enforcement policy. It is recommended that the judiciary benefit from full *de facto* independence. The government should further build the capacity of the overall justice system by conducting studies on how to improve training and the judiciary’s powers of investigation and prosecution.

1.4.2. Accountable, Responsible Institutions to Fight Corruption

Countries usually designate different institutions to prevent, detect, and prosecute corruption. For greater efficiency and effectiveness, their responsibilities are clearly defined. Some countries use multi-purpose agencies that combine preventive anti-corruption functions and law enforcement powers. Others establish bodies dedicated to prevention and, in addition, designate specialised autonomous anti-corruption law enforcement bodies.

Regardless of the bodies a government may put in place, it must make a serious effort to provide them, the police, prosecutors, and magistrates with: precise mandates avoiding overlaps; human, financial, technical, and organisational resources; adequate training.

In Egypt, several agencies operate at different levels of government with a variety of powers (see Appendix 2.1). They are reportedly autonomous. There is, however, a lack of data on their budget and training expenses. According to government reports, remuneration packages for officials working for the agencies have been improved in recent years and training is regularly provided. Experience shows that, in general, corruption offences are increasingly sophisticated and international. Training programmes should therefore provide constant updates on corruption practices.

There also seems to be a lack of communication as to the roles, functions, and prerogatives of government anti-corruption agencies. The Ministry of Justice and Public Prosecution – in charge of the Illegal Gains Department, the Administrative Prosecution Authority, and the Public Funds Prosecution – do not seem to coordinate their areas of jurisdiction. Information on persons associated with these agencies was not provided to the BCDS team. Nor was any clarification forthcoming on their interaction with other investigating agencies, such as the Administrative Control Authority (under the authority of the Prime Minister) or the Public Funds Investigation Police (under the authority of the Ministry of Interior).

BCDS Score Accountable, Responsible Institutions to Fight Corruption: 2

Although the government has designated several institutions to engage in the fight against corruption, the Egyptian institutional system has not demonstrated its effectiveness in keeping with the specifications for “accountable, responsible institutions to fight corruption” outlined above.

The Egyptian government should develop a clear understanding of the different institutions’ mandates. It may find that they duplicate their efforts in some areas, while failing to address others properly. In clarifying the roles of the different institutions, consideration should also be given to management reform: there should be an effort to cut bureaucracy and simplify chains of command which may negatively impact on the implementation of anti-corruption provisions.

Thereafter, the government should commit to helping public agents improve their knowledge through training in all relevant provisions, as well as in techniques to investigate and prosecute economic crimes such as bribery of public officials. (In this regard, an earlier OECD-MENA report noted that police training still largely reflects the continuing dominance of the militaristic model of policing in Egypt.)²⁸

1.4.3. Inter-Agency Coordination and Co-operation

When different government agencies are involved in the fight against corruption and related crimes, there should be procedures in place to ensure information sharing and co-operation – vital for bribery detection. Communication also enables exchanges of practice and ideas on methods of preventing and detecting corruption. Spontaneous co-operation on a case-by-case basis sometimes exists when no formal co-operation and communication framework has been defined.

Egypt's centralised administrative system requires that mandates and job descriptions be firmly respected by administrative authorities. However, to date, there does not seem to be systematic inter-agency communication in Egypt.²⁹ Without clearly defined mandates, several ministries have become involved in the same activities and processes, requiring separate negotiations and, in certain circumstances, lengthy bureaucratic and inter-ministerial battles.³⁰

In its August 2008 report, the Transparency and Integrity Committee refers to recent initiatives to build a network involving government agencies and media outlets.³¹

BCDS score for Inter-Agency Co-ordination and Co-operation: 2

From information collected, it appears that co-operation between agencies and ministries is not explicitly defined in laws, regulations, or administrative guidelines. As some interviews highlight, no formal channels of communication have been established.

It is strongly recommended that formal procedures be defined and put in place to improve co-operation. Referral mechanisms should also be established to ensure that suspicions of corruption are transmitted to and followed up by the law enforcement authorities. The Central Audit Organisation and the Administrative Control Authority could serve as central bodies to improve consistency, accountability, and integrity within the civil service.

Corruption is a fraught issue and many people are reticent about joining the fight against it unless encouraged to do so by central government's new national strategy. A cultural factor also needs to be considered. Egyptians are individualistic by nature and prefer to work alone rather than in groups. Egyptian culture does not value team work and it may be some time before it becomes a part of the national mindset.

1.4.4. / 1.4.5. Tax Administration and Customs Administration

Bribery risks are particularly high in tax and customs administration, where officers may be tempted to abuse their position of power for personal gain. In addition, customers may seek to evade taxes or accelerate customs procedures through the payment of bribes.

A variety of factors contribute to corruption in tax and customs administration. The complexity of laws and procedures (regulations, exemptions, etc.), as well as the level of control and discretion granted to officials, increase the risk of bribery on both sides. In that regard, simplification of the tax and customs systems (in line with the specifications described in Dimension I-5 "Better Business Regulations"), together with an assessment of potential risk, may reduce the risk of bribery. In addition, sets of integrity measures, staff rules, reporting procedures, and sanction mechanisms need to be put in place to increase integrity.

Both the tax authorities and customs administration play a key role in the security and well-being of the population, and are a key source of income for the state. Separate indicators and evaluations apply to them in this chapter.

In 2004, the new cabinet announced reforms in the tax and customs systems, although the move was not prompted by the political will to eradicate corruption in those departments. In an effort to enhance transparency, the Ministry of Finance, the Egyptian tax authorities, and the customs authority introduced simplified procedures and reduced personal contact between public officials and taxpayers. Efforts were also undertaken to improve the training of officials. Nevertheless, the Egyptian government carried out no systematic review of integrity in either the tax or customs departments.

Income Tax Law No. 91/2005 improved the unified tax collection system by implementing self-assessment and direct submission, reducing bureaucracy, and limiting person-to-person contacts with tax officials, as well as reducing their discretionary powers.³² In May 2006, the Sales Tax Department and the Income Tax Department were merged into the Egyptian Tax Department, also limiting the number of interactions with tax officials.³³ In addition, the law now provides for clearer filing rules and severe punishment for non-compliance.

The Ministry of Finance has also been conducting studies to streamline and reform customs regulations and provide a clearer institutional organisation.³⁴ According to the report, *Doing Business 2009*, bribery within the Egyptian customs authorities is still extremely widespread, particularly in lengthy import and export procedures.³⁵

The Ministry of Administrative Development is also currently working on codes of ethics for tax and customs officials. However, the MENA-OECD Investment Programme was informed that, due to budgetary constraints, the drafting of codes of conduct is progressing slowly. Continuous professional development and training programmes have been introduced to improve communication with taxpayers on their rights and obligations.

BCDS Score for Tax Administration: 2

BCDS score for Customs Administration: 2

An initial assessment suggests potential problems in the laws and institutions of both the tax and customs departments. Significant attempts to rationalise and simplify the system have been conducted, though not for the specific purpose of fighting corruption in those departments.

It is recommended that the vulnerability to corrupt practices in both the tax and customs authorities should be assessed. Such an assessment could seek to determine to what extent a lack of integrity in both departments leads to loss of revenues – e.g. because corruption increasingly discourages international companies from entering the Egyptian market. It is also recommended that newly developed integrity and ethics tools be regularly communicated to staff and monitored for understanding and application. Finally, the tax and customs authorities are encouraged to develop appropriate reporting mechanisms.

1.4.6. Public Procurement

Procurement can account for one-fifth to one-quarter of government expenditure. The passing of public funds into private hands through public procurement procedures presents enormous potential for corruption. It thus deserves particular attention.

Public procurement has become a dynamic reform area over the last decade and anti-corruption is an integral part of the reform agenda. Corruption risks inherent to public procurement are increasingly well understood.³⁶ They result notably from the high value and number of contracts, the complexity of procedures, discretion in contract administration and attribution, weak oversight, and limited implementation capacity. The multitude of risks calls for the establishment of a variety of mechanisms which curtail corrupt practices. International instruments, such as the UNCAC and OECD instruments to fight corruption and enhance integrity, set standards for procurement frameworks. The standards are binding for countries that have ratified the instruments.

Clear and comprehensive regulations are a fundamental prerequisite for curbing corruption in public procurement. Rules should take account of key principles such as transparency and fairness, objective decision-making criteria, and adequate review and control mechanisms. Below are some of the priorities

for enhancing integrity in public procurement. Other measures not mentioned would also be desirable for curbing corruption in public procurement.

a) Frameworks and Processes

The regulatory framework needs to encompass the entire procurement cycle from conception to the definition of needs and the final phase of contract payment. The UNCITRAL Model Law on Procurement of Goods, Construction and Services sets out a number of rules on standardisation, enhanced transparency (including access to information), and foreseeable government procurement processes. Ensuring that procurement agencies and national courts understand, apply, and enforce procurement and anti-corruption rules and regulations is the most effective way to reduce the risk of malicious practices.

Egypt's Procurement Law No. 89/1998 requires that high-value procurement contracts be submitted to competitive bidding. According to the law, which was inspired by the UNCITRAL Model Law on the Procurement of Goods, Construction, and Services and the World Bank's Model Laws of Procurement, bidders may challenge procurement decisions in court. According to the law, citizens can access and assess procurement regulations. The head of the agency, the governor, or the concerned minister may also engage in direct contracts and the President of the Council of Ministers may develop rules and conditions for various contracts under the terms of the law.³⁷ The government is putting in place a "procurement portal"³⁸ intended to provide companies with online access to tender registration and information, although most of it is in Arabic.

No information was made available on how government agency practices complied with transparency and accountability principles, or on the extent of recourse to non-competitive procedures in the public procurement process.

BCDS Score for Public Procurement: 2

The law calls for processes to enhance transparency and reduce discretion in public procurement. Yet there are serious doubts regarding the application and enforcement of the law by all procurement entities.

Due to the economic importance of public procurement in the domestic budget and national economy, it is very important that it be adequately regulated and monitored. Frameworks and processes ensuring simplification and transparency must be enforced. The Egyptian authorities are urged to ensure effective national implementation of the current regulatory framework and to consider further simplifying it. In particular, all procurement entities should enforce the relevant legal provisions, and the attribution of contracts on the basis of non-competitive procurement should be limited and exceptional. We strongly support the Egyptian government's intention of reviewing domestic procurement provisions in the light of international procurement and anti-corruption standards.

b) Reducing Corruption Risks

Public procurement agencies can play a significant role in deterring, detecting, and sanctioning corruption. They can take measures to improve integrity and transparency, and prevent misconduct (ethics codes, appointments on integrity and merit, integrity training, asset declarations, etc.). Based on due diligence assessments, they can, furthermore, put in place specific mechanisms to monitor decisions and enable the identification of irregularities and potential corruption. To enhance transparency and limit risks, countries may regulate intermediation in government procurement (e.g. register intermediaries). Finally, provisions can regulate contracts between procurement agencies and companies and individuals with a record of bribery (e.g. debarment when involved in corruption offences).

A mechanism to monitor the assets, income, and spending of public procurement officials has been established under Law No. 89/1998. No information has been made available as to the operation of that mechanism. The law also provides for the possible disqualification from pending and future procurement (see above, 1.2.4 “Sanctions”). There does not seem to be any further initiative defining preventive measures for encouraging integrity and transparency in procurement agencies. Evidence of due diligence by public authorities in order to examine the credibility and integrity of bidders is, however, missing.

Law No. 120/1982 states that contracting agencies should include information concerning the payment of commissions to commercial agents and intermediaries for securing decisions or procurement contracts.³⁹ According to the legislation, non-compliance with the registration and disclosure requirements or with the prohibition of intermediation is sanctioned by fines, and sometimes even by prison terms.⁴⁰

BCDS Score: 1.5

Egypt scores 1.5 as Law No. 89/1998 requires a declaration of assets to reduce corruption risks. To perform better, Egypt would need to prove the existence of integrity provisions and their enforcement by public procurement agencies and services. The Egyptian authorities are also urged to provide further specifications on the enforcement of provisions regulating both the role of intermediaries and the debarment from procurement contracts of persons involved in corruption.

The Egyptian government is encouraged to involve stakeholders in public procurement. Companies increasingly understand their interest and role in contributing to the fight against corruption in procurement. Their awareness and involvement can be seen as an indicator of success. Civil society also plays an active role in screening proceedings and in helping to develop and apply anti-bribery mechanisms.

1.4.7. Awareness Raising and Public Education

Promoting an “anti-corruption culture” involves actively raising awareness of the existence, causes and gravity of the threat that corruption poses to all stakeholders, *i.e.* government officials, the private sector, and the public at large. Non-government actors are pivotal to promoting awareness. Instigating and maintaining public awareness calls for an informed public debate. This requires public access to official information, as well as publicising government priorities and the means to achieve them. An informed civil society can reciprocate by devising approaches to counter major public threats stemming from corruption and organised crime.

Apparently a number of Egyptian government agencies (*e.g.* the Egyptian Institute of Directors) have engaged in awareness programmes. Nevertheless, awareness training in the risks of corruption within the civil service is rare and irregular. Furthermore, the government does not always seek to communicate with the public or raise awareness of its actions to curb corruption: it does not, for example, publicise its materials. According to government contacts, this is because the budget for such purposes is inadequate. Other government contacts ascribe limited awareness-raising to the restricted access to information.⁴¹

BCDS Score for Awareness Raising and Public Education: 2

Thanks to the increased emphasis the government has recently placed on awareness-raising, Egypt is awarded a score of 2. This finding is consistent with the absence of a clearly defined anti-corruption strategy (see above, 1.1. “Anti-Corruption Strategy”).

Egypt is advised to seek further information on the benefits of informing stakeholders of the detrimental effects of corruption and of ways to combat it. The success of the national strategy indeed depends on the wider public’s level of awareness. Various mechanisms for reaching out to the public on these issues have been developed by other countries. They can be made available through the MENA-

OECD Investment Programme. In a country where only a fraction of the 30% of the population under the age of 18 is in school or in formal education, it may be appropriate to consider developing programmes designed to inform young people of the detrimental impact of corruption on society and of the appropriate means for fighting it.

1.4.8. The Media as a Means to Expose Malpractice

Print and electronic media can play a pivotal role in informing public opinion and improving political, economic, and social conditions. In many countries, a free press contributes to a better understanding of the dangers and costs of corruption and puts pressure on ruling elites to mend their ways and support anti-corruption activities. Investigative journalism, which requires the development of reporting skills, may help uncover corruption. The engagement of journalists requires serious protection of their freedom of expression.

The role of the Egyptian media is unclear when it comes to revealing corruption allegations. Government sources affirm that there are regular and numerous reports of corruption in the media. This is a new development: even a decade ago, it would have been inconceivable to report allegations of corruption involving highly thought-of public officials. Nevertheless, the media should probably do more.

To start with, the media could play a more educational role and help raise citizens' overall awareness. Furthermore, the *2008 Annual Report* of the Transparency and Integrity Committee mentions that the media's role in exposing, reporting, and collecting information on corruption is limited. The report points to a lack of trained professionals capable of objectively and methodically covering corruption cases. The report also refers to the absence of press reports discussing issues of transparency and integrity from a social and economic perspective.

The Egyptian Constitution affirms the independence of the media (Articles 47-8 and 206-7).⁴² However, journalists are purportedly exposed to significant pressure, which limits their professional independence.⁴³ The Egyptian courts have convicted numerous editors and journalists for articles criticising the Egyptian government under the terms of Article 188 of the Penal Code. The article prohibits the publication, with "malicious intent", of "false news, statements, or rumours likely to disturb public order". Law No. 162/1958, known as the "emergency law", also allows the Attorney-General to censor the publication of information about particular crimes. Egypt ranks 146th out of 173 countries in the *Freedom of the Press Index*. Egypt is also classified as one of the 12 "enemies of the Internet" (with the creation of an Internet police within the Ministry of Interior),⁴⁴ despite having one of the highest Internet penetration rates on the African continent.

BCDS score for the Media as a Means to Expose Malpractice: 2

In Egypt, formal guarantees and *de facto* restrictions limit the freedom of the press.

Because a free media (embryonic in Egypt at the moment) can act as a beneficial counterweight to unchecked power, the Egyptian government is urged to ensure the media may exercise its independence and freedom of expression.⁴⁵ This means that it should be free to address corruption-related issues without fearing intervention or unwarranted influence. It may also mean amending Article 188 of the Penal Code. It would also be useful if media staff received training to help them upgrade their skills in dealing with corruption-related issues (investigation, protection of sources, etc.).

1.5. Private Sector Actions to Stem Corruption

Government action alone is generally not enough to prevent and combat corruption. Private sector involvement is a necessary component in a successful strategy of prevention and enforcement. It is particularly necessary in Egypt, where there is a growing tendency for public officials to establish private businesses and where risks of conflict of interest appear high.

Business associations and trade unions can also play a decisive role in promoting better business practices and providing guidance on ways of addressing corruption in daily business. Because international companies based in Egypt are subject to stricter transnational rules in their country of origin, they may exert an influence on prevailing perceptions and on the actions of larger corporations and smaller partner companies in Egypt.

1.5.1 / 1.5.2 Private Codes of Conduct and Compliance Programmes (with Specific Anti-Corruption Provisions)

Companies, business associations, and industry federations can be involved in the fight against corruption. They may combat it through individual policy or collective actions, whether sector-specific or multi-industry, and at local, regional or global level. Codes of conduct reflect the overall “ethical philosophies” of corporations. Compliance policies and procedures ensure that the ethical standards of a corporation are applied effectively and that they address any risks that may arise in the course of business operations. Each company determines the measures which are most conducive to a compliance culture. One crucial element is the dissemination of the rules contained in codes of conduct and compliance programmes to all employees and a clear disciplinary policy for non-compliance.

Some major Egyptian companies have established codes of conduct and corporate governance policies. No data is available on other companies having committed to such programmes. However, only international companies seem inclined to draw up codes of conduct and compliance programmes, generally under pressure from their major international shareholders.

In Egypt, existing corporate governance ethics and codes of conduct do not generally include anti-corruption provisions.

Box 3. Reported examples of corporate codes of conduct and compliance programmes in Egypt

- MobiNil, the country's leading mobile operator drew up a code of conduct for employees in 2005.⁴⁶ It stated: "The first objective of these guidelines is to ensure that our employees do not participate in corrupt acts such as offering bribes with the aim of circumventing or breaking Egyptian laws, regulations and ethical standards. The second objective is to ensure that our employees do not receive gifts in return for illegal or illegitimate favours."

The process was initiated at the request of the company's shareholders, France Telecom, Orange, and Orascom. Some of the most nationally advanced provisions include rules relating to gifts or advantages, conflicts of interest, and specific provisions relating to whistle-blowing channels through an internal audit and fraud department. Non-compliance may result in disciplinary action.
- Egytrans, a transport and commercial services company, has also instituted a code of ethics.⁴⁷ It does not, however, require any particular conduct from employees. Nor does it specifically address corruption issues.
- EFG-Hermes, a major regional investment bank, is also reported to be a model company, yet relevant documents could not be accessed.
- Siemens also implements a compliance programme system ("Prevent – detect – respond") against illegal and unethical behaviour, including corruption.⁴⁸ It has drawn up binding guidelines for ethical behaviour that are applicable to both managers and employees.⁴⁹ Non-compliance may result in disciplinary sanctions. Siemens is reported to collaborate with non-governmental organisations such as CIPE on corruption issues.

According to independent statements, many companies would prefer to abstain from corruption. However, the proportion that pay bribes when dealing with public officials is high – up to 40% – and increasing, according to data collected by the CIPE's 2009 *Survey on Corruption*.⁵⁰

In July 2007, Egypt became the first Arab signatory to the OECD Declaration on Investment and Multinational Enterprises. The declaration consists of four elements, one of which is the *Guidelines for Multinational Enterprises*. They set out "voluntary principles and standards for responsible business conduct addressed to multinational enterprises themselves". Guideline No. VI considers measures to combat bribery. Although its measures are non-binding, the guideline provides a framework of recommendations to help corporations in their social and legal responsibility to fight corruption and heighten employee awareness. Accordingly, Egypt set up a National Contact Point which, in mid-2009, organised a half-day workshop for the business community, the Egyptian Trade Union Federation, and national NGOs. Egypt has also been active in the MENA Responsible Business Forum, an initiative of the MENA-OECD Investment Programme.

BCDS Scores for Private Codes of Conduct and Compliance Programmes (with Specific Anti-Corruption Provisions): 2

Government agencies have recently strengthened outreach to engage the private sector in the fight against corruption, while there have been an increasing number of private initiatives to come to terms with corruption via preventive measures. However, companies have so far made no special efforts to develop corporate compliance programmes. To increase the score of 2, initiatives to develop codes of conduct and compliance policies are necessary, either on a case-by-case basis or at industry or sector level,

It is recommended that the Egyptian National Contact Point, as well as other relevant government agencies and NGOs, seek to engage in a national dialogue. Furthermore, they should seek to obtain exhaustive information on international initiatives aimed at developing private integrity principles. The OECD *Guidelines for Multinational Enterprises* could constitute a framework of principles to be transposed to national corporations. Such a framework would include anti-bribery standards in business

relationships relating to the management of subsidiaries, joint ventures, agents, contractors and suppliers, as well as to rules governing bribes, political contributions, charitable contributions and sponsorships, facilitation payments, gifts and hospitality.

1.5.3. Non-Financial Reporting

Active disclosure efforts by companies are a driver of good governance: they complement government and stock exchange regulations and have high visibility and impact. Government initiatives to establish a framework of financial rules fall under efforts related to corporate governance. Specific actions to foster non-financial reporting include encouraging the disclosure of information on anti-corruption measures to shareholders, staff, and the public at large. An additional course of action is to publicise the procedures employed (whistle-blowing, training, policy components) and the enforcement of integrity measures, including certification by internal audits.

Egyptian accounting and auditing standards do not require or encourage non-financial statements to be published. Active disclosure of action to fight corruption through websites or corporate newsletters is not customary. In fact, a review by Egypt's Capital Market Authority shows that a high number of listed companies do not even comply with disclosure and audit requirements and formats.⁵¹

The *OECD Guidelines on Multinational Enterprises* encouraging employee awareness and the dissemination of company policies against bribery have not yet been implemented.

Two non-binding Egyptian sets of guidelines have also formalised disclosure of non financial information. Both documents were published by the Egyptian Institute for Directors, chaired by the Ministry of Investment:

- The *Guide to Corporate Governance Principles in Egypt (2005)*⁵² is a non-binding document with which listed and limited liability companies in Egypt are advised to comply “for the sake of their companies and the overall business climate”. The document includes a contribution from the International Finance Corporation (World Bank Group) – Rule 7-3 relating to “disclosure of social policies” which advocates transparency, credibility, and mutual interest companies’ relations with the community.
- *The Code of Corporate Governance for the Public Enterprise Sector (2006)*⁵³ contains provisions originating from the *OECD Guidelines on State-Owned Enterprises*, although it does not make any recommendation regarding corruption.

Neither document seems to be actually used or enforced and neither was included in the government’s response to the BCDS. It would be useful to promote them to Egypt’s larger companies.

BCDS Score for Non-Financial Reporting: 1

The Egyptian government does not play an active role in encouraging businesses to disclose non-financial information on action to fight corruption. Hence the score of 1. In line with the developments mentioned above, it is recommended that:

- further measures should be taken to prevent the involvement of the private sector in corruption, to enhance standards of accountability and auditing in the private sector, to promote good governance, and to prevent conflicts of interest, illegal commissions, and any form of commercial fraud,⁵⁴

- dialogue between government and the private sector on improving co-operation should be encouraged.

It is essential that the two documents published by the Egyptian Institute of Directors should be publicised and their principles enforced.

CONCLUSION

Key Findings

Corruption has been acknowledged as a serious issue for business operations in Egypt. The BCDS Phase 1 exercise has observed strengths and identified challenges to an efficient anti-corruption framework in the country.

High-level government representatives and ministries have recognised and started to address the problem of corruption in Egypt. Several initiatives have been launched since the ratification of the United Nations Convention against Corruption. In addition to some very initial stocktaking efforts, the authorities have taken part in international initiatives and recently signed up to the OECD Declaration on International Investment and Multinational Enterprises.

An institutional network of agencies exists to prevent, investigate, and punish corruption at the executive and judiciary level. Some corruption cases involving high-profile officials have been investigated and prosecuted.

Significant reforms have been carried out, particularly in the tax and customs sectors. They have involved streamlining laws, regulations and institutional organisations, establishing simplified procedures, and reducing opportunities for personal contact between public officials and members of the public.

Outreach to the private sector is still embryonic, but is now developing through the Egyptian Institute for Directors and the Transparency Unit at the Ministry of Investment.

Key Recommendations

Egypt should consider defining a co-ordinated long-term strategy that builds on an action plan involving all relevant government agencies and enjoys an adequate budget and ministry support:

- organise awareness-raising campaigns on the detrimental effects of corruption in the country and communicate more effectively on government initiatives;
- amend the legal framework to take full account of the most recent international anti-corruption standards;
- reinforce institutional co-ordination, practices, and efficiency requirements;
- encourage current initiatives to streamline rules and procedures and develop codes of conduct and ethics in order to reduce the discretionary powers of officials and the risks of corruption they generate;
- engage business associations, civil society representatives, and the media in effective dialogues to develop joint action, including codes of conduct and compliance programmes.

Figure 3. Weighted BCDS Scores

		OECD	Weight	AVERAGE	TOTAL
1.1	Anti-Corruption Strategy				1.92
1.1.1	Stocktaking the Corruption Situation	1	2	0.28	
1.1.2	Anti-Corruption Strategy	2.5	3	1.07	
1.1.3	Stakeholder Participation	2	2	0.57	
1.2	Criminalisation of Corruption				2.96
1.2.1	Defining Corruption-Related Offences	3.5	3	0.75	
1.2.2	Parties to bribery	4	3	0.85	
1.2.3	Immunities	2.5	3	0.54	
1.2.4	Sanctions and Confiscation	2.5	3	0.53	
1.2.5	International Co-operation: Mutual Legal Assistance and Extradition	2	2	0.29	
1.3	Enforcing Domestic Anti-Corruption Provisions				1.8
1.3.1	Control and Detection	2.5	3	0.75	
1.3.2	Reporting	2	3	0.6	
1.3.3	Collecting Statistics on Corruption Offences	1.5	1	0.15	
1.3.4	Implementing and Enforcing Sanctions	1	3	0.3	
1.4	People and Public Institutions Involved in the Fight against Corruption				1.97
1.4.1	Independence of the Judiciary	2	3	0.25	
1.4.2	Accountable, Responsible Institutions to Fight Corruption	2	3	0.25	
1.4.3	Inter-agency Co-ordination and Co-operation	2	3	0.25	
1.4.4	Tax Administration	2	3	0.25	
1.4.5	Customs Administration	2	3	0.25	
1.4.6	Public Procurement		3	0.22	
	a) Frameworks and Processes	2			
	b) Reducing Corruption Risks	1.5			
1.4.7	Awareness Raising and Public Education	2	3	0.25	
1.4.8	The Media as a Means to Expose Malpractice	2	3	0.25	
1.5	Private Sector Actions to Stem Corruption				1.8
1.5.1	Private Codes of Conduct	2	2	0.8	
1.5.2	Compliance Programs	2	2	0.8	
1.5.3	Non-Financial Reporting	1	1	0.2	

APPENDIX 1 – LEGAL FRAMEWORK: INCRIMINATED OFFENCES AND SANCTIONS

The following appendix is based on extensive research by the OECD Secretariat. Little information was provided by the Egyptian government, so observations are based on unofficial translations of the Egyptian Penal Code. This annex supplements indicators used to assess the legal framework governing criminalisation of corruption.

The Egyptian Constitution (Article 2) establishes that Islamic case-law jurisprudence is the main source of Egyptian law. However, the Code of Judicial Procedure and the Penal Code also draw on the French and Italian Napoleonic models and English principles, which assimilates Egyptian law to a civil-law system.⁵⁵

Provisions applying to corruption may be found in the provisions of different laws:

- under Articles 103-112 of the Penal Code, corruption is a serious offence (misdemeanour) and falls into the category of offences against the public function and the public interest (Book Two of the Penal Code);
- Article 18 of Law No. 62/1975 covers illegal profit-making;
- Article 77 of Law No. 47/1978 prohibits civil servants from receiving gifts or rewards for exercising their duties;
- the most recent law on money laundering (Law No. 80/2002) also includes provisions relating to funds originating from corruption.

Table APP1.1. Incriminated corruption offences and associated sanctions according to type of offender

Offender	Imprisonment	Fine	Ancillary Sanction	Seizure and Confiscation	(Comp. money laundering)
Public official	Articles 103-104b: hard labour Articles 105-105b: imprisonment	Articles 103-104b: From EGP 1 000 (EUR 120, USD 180 as of September 2009) to the value of the bribe Article 105-105b: EGP 200-500 (EUR 24-60 as of September 2009)	Article 24-26: stripped of privileges, barred from public function	Yes	Laundering of corruption proceeds: maximum 7 years imprisonment, and twice the value of the property involved in the transaction
Third-party beneficiary	Article 108b: one year min.	Article 108b: equal to value of bribe	No	Yes	
Briber (individual)	Article 107b: same as bribee	Article 107b: same as bribee	No	Yes	
Briber (legal person)	Not stated	Not stated	Disqualified from procurement	Yes	Criminal liability of the individual person in charge, and joint liability for fines and damages
Intermediary	Article 107b: same as briber	Article 107b: same as briber Article 109b-2 EGP 200-500 (EUR 24-60 as of	No	Yes	

APP1.1. The Bribery of Public Officials

Under the Penal Code, corruption is a serious offence. While the law does not explicitly refer to intention in its definition of corruption, corruption is an intentionally committed offence. That said, Article 104b does refer to non-intentional corruption – i.e. when a public official performs an act of corruption in the discharge of his or her duties “without having the intention” of doing so.

Bribery involves an undue advantage which the Penal Code spells out as being financial or other in nature (Article 107).

Egyptian law criminalises both passive bribery, i.e. requesting, soliciting, receiving or accepting a bribe (whether acting in accordance with, outside, or as facilitated by the offender’s function), and active bribery of public officials, i.e. offering, promising, or giving a bribe. Incrimination of bribers is not explicitly mentioned in the law but is implicitly covered in Article 107b: “The briber ... shall be punished with the penalty prescribed for the bribe-taker.”

APP1.1.1. Passive and Active Bribery

Passive Bribery

“Requesting” or “soliciting” a bribe occurs when an official indicates to another person that the latter must pay a bribe in order for the official to act or refrain from acting. Articles 103-105b cover such situations. The soliciting of a bribe must be in consideration of one of the following acts performed by a public official:

- performing a duty that falls within the scope of his or her competences (Article 103);
- performing a duty that is wrongfully considered as falling within the scope of his or her duties (Article 103bis);
- abstaining from carrying out a duty falling within the scope of his work, or committing a breach of any of his duties (Article 104);
- doing any of the following, but unintentionally – carrying out a duty that falls within the scope of his or work, or which is wrongly thought to fall within his or her scope of work; or pretending that it falls within his or her scope of work, or abstaining from carrying it out; or committing a breach of his or duties (Article 104bis);
- accepting a gift from a person in return for rendering a service that falls within the scope of his or her work (Article 105);
- performing or abstaining from carrying out a duty falling within the scope of his or her work, or committing a breach of his duties as the result of a request, recommendation, or intermediation (Article 105bis);

The act of “requesting” or “soliciting” is complete once an official requests or solicits the bribe. There need not be agreement between the briber and the official, or evidence of agreement of corruption. Only “receiving” and “accepting” require agreement. “Receiving” or “accepting” a bribe occurs only when an

official actually takes a bribe according to Articles 103-105b, which do not make any of the distinctions listed above.

Active Bribery

- “Offering” occurs when a briber indicates that he/she is ready to give a bribe. As per Article 109b-1, “imprisonment and a fine ... shall be inflicted on whoever offers a bribe, even when not accepted”. Attempted bribery also constitutes an offence under Article 109b-1, *i.e.* when a bribe is offered but not accepted.
- “Promising” refers to a briber who agrees with an official to provide a bribe (*e.g.* where the briber agrees to a promise from the public official). In accordance with Articles 107 and 107b, an incriminated promise is constituted by any benefit obtained or accepted by the public official.
- “Giving” occurs when the briber actually transfers the undue advantage. Similarly, under Article 107b, an incriminated gift is any benefit obtained or accepted by the public official.

APPI.1.2. Scope of Egyptian Law’s Bribery Provisions

Definition of Public Official

Under Article 111 of the Penal Code, the definition of a public official covers:

- any person discharging a public duty (Clause 5);
- any person employed in a governmental agency or placed under the control of the government (Clause 1);
- members of national or local representative councils, whether either elected or appointed (Clause 2), and therefore including Members of Parliament, subject to the lifting of their immunity;
- arbitrators, experts, religious representatives, liquidators and judicial administrators (Clause 3);
- board members, employees and managers of any enterprise in which the state is a shareholder (Clause 6). (Board members and public company representatives are also considered as public officials under Article 106A.)

Foreign public officials and officials from international organisations are not explicitly covered.

Third-Party Beneficiaries

Third-party beneficiaries are explicitly covered in all applicable provisions on corruption (“for himself or for a third party” in Articles 103, 103bis, 104, 104bis, 106, 106bis, 106A), as long as they are individuals. Responsibility of legal persons is not covered in the Penal Code.

Intermediaries

Indirect bribery is incriminated in Article 105b (“as a result of ... intermediation”) and Article 108. Under Article 109b-2, and “subject to harsher penalties imposed elsewhere” (*e.g.* when, pursuant to Article 108, “the purpose of the crime is to commit a deed punished by the law with a severer penalty than

the one prescribed for the bribe”), intermediaries would be subject to sanctions when offering or agreeing to mediate.

Intermediaries acting in good faith *i.e.* when transmitting an offer, promise, or gift to the official without knowledge of his or her intent to commit the offence, would be exempted under Article 60 (offence committed in good faith).

Statute of Limitations

Three years for felony and ten for misdemeanour.⁵⁶

Territorial Scope of Egyptian Law

Pursuant to Article 2-1 of the Penal Code, Egyptian law applies to “any person who commits outside the country an act which makes him a principal or an accessory to an offence committed wholly or partially in Egypt”. Accordingly, committing any one constituent element of an act on Egyptian soil could, at least theoretically, be enough to justify the application of Egyptian law, and consequently the jurisdiction of Egyptian criminal courts.

Pursuant to Article 3, “any Egyptian who, while he/she is outside Egypt, commits an act considered a felony or misdemeanour under this law shall be punished according to its provisions if he/she returns to Egypt, provided that the act committed was punishable under the law of the country where the act was committed”. Corruption of foreign officials is therefore not specifically covered.

APPI.1.3. Sanctions

Generally speaking, sanctions more often affect the recipients of bribes (*i.e.* the public officials) than the bribers. Egyptian law provides for an indexation of sanctions for the bribe-taker and the briber (Article 107bis).

Penalties for the Public Official (Bribee or Bribe-Taker)

The primary sanction is a prison term, which can be a life sentence with hard labour under Articles 103-104b. Although hard labour is prohibited under the International Covenant on Civil and Political Rights (ICCPR) to which Egypt is a party, such a sanction would be considered an exception by Article 8.3b of the ICCPR, *i.e.* hard labour in execution of a prison sentence. In practice, bribery charges do not entail more than three years’ imprisonment⁵⁷.

If public officials take bribes in the discharge of their duties, Article 103 and 103b provide for a financial penalty of at least EGP 1 000 (EUR 120, USD 180 as of September 2009) and not exceeding the donation or the promise given.⁵⁸ When public officials take bribes outside the scope of their duties, Articles 104 and 104b state that the fine should be doubled. Financial sanctions for subsequent offences range between EGP100 and 500 (EUR 12-60, USD 18-90 as of September 2009).

Egypt has developed a set of additional ancillary penalties. Public officials may be:

- stripped of rights and privileges relating to their functions or removed their position (Article 24);
- disbarred from any public position or any public procurement opportunity, stripped of any decoration, banned from eligibility (Article 25);
- barred from holding a government position (Article 26).

Accomplices, including third-party beneficiaries – *i.e.* “any person who is appointed to take the donation or benefit, or learns of it, and is agreed to by the bribe-taker” – are liable to a one-year prison term and a fine equal to the amount of the bribe under Article 108b, if they are knowingly involved in the bribe.

Primary Penalties for Bribers

Pursuant to Article 107b, the briber and the intermediary are considered as accomplices in the offence of bribery and, as such, are subject to the same punishment as the public official, *i.e.* imprisonment and a fine.

Attempted bribery is also subject to imprisonment and a fine of EGP 500 to 1 000 (EUR 60-120, USD 90-180 as of September 2009) under Article 109b-1.

APP1.2. Other Corruption Offences

Trading in Influence

Article 106b incriminates the use of true or pretended authority to obtain, or attempt to obtain, from any official: works, orders, decisions, emblems, delivery orders, construction contracts, employment, favours, or advantages of any kind (*e.g.* the action of receiving from or giving rewards to public officials for purposes of influencing decisions). Influence trafficking entails an unspecified prison term for the briber as well as financial sanctions of EGP 200-500 (EUR 24-60, USD 36-90 as of September 2009). The same penalties are applicable to bribe-takers acting in ways set forth in Article 104 – *i.e.* refraining from performing their work or defaulting on their duty).

Embezzlement, Misappropriation and Diversion of Property

Embezzlement, misappropriation and diversion of property are incriminated in (Articles 112 *et seq.* of the Penal Code. Penalties are exclusively prison terms and hard labour, which can be either of a limited duration or for the duration of the prison term.

Business-to-Business Corruption

Business-to-business corruption is subject to interpretation by the courts. One independent consultant considers that it is not covered by the Penal Code, although the language of Article 109b-1 could be interpreted as referring to private corruption through the incrimination of attempted corruption, which is the article’s prime purpose. It reads: “If the offer by whomsoever is made to anyone else but a public official, the penalty shall be imprisonment for up to two years or a fine not exceeding EGP 200” (underlines added for emphasis). Also, it is unclear what kind of individuals (“any employee”) fall under the provisions of Article 106 and, specifically, whether they may be private sector employees or only those singled out in Article 111-1, *i.e.* “employees of departments attached to the government” or (Article 111-1) employees of “corporations, companies, associations, organisations and establishments in which the state or a public authority is a shareholder.”

Obstruction of Justice

Obstructing justice is not criminalised.

APPENDIX 2 – INSTITUTIONAL FRAMEWORK: PUBLIC BODIES AND AGENCIES WITH PREVENTION AND LAW ENFORCEMENT POWERS

This appendix, drawn from research by the OECD Secretariat, supplements indicators relating to the institutional framework for fighting corruption.

APP2.Table 1. Egyptian bodies and agencies with anti-corruption powers

Institution	Creation	Authority	Prevention			Enforcement		
			Conduct studies	Control/ Detect	Receive complaints	Investigate	Prosecute	Sanction
Transparency Unit	2007	Ministry of Investment	x					
Transparency and Integrity Committee	2007	Ministry of Administrative Development	x					
Information and Decision Support Centre	1985	Cabinet	x					
Citizens Relations Management (hotline)	2008	Ministry of Administrative Development			x			
Administrative Control Authority	1964	Prime Minister		x	x	x		
Central Auditing Organisation	1964	President	x	x				
Public Funds Investigation Police	1985	Ministry of Interior		x	?	x		
Public Prosecutor / Attorney-General		Ministry of Justice				x	x	
Illegal Gains Department	1968	Ministry of Justice		x	x	x		
Administrative Prosecution Authority	1958	Ministry of Justice		x	x	x	x	
Public Funds Prosecution		Ministry of Justice				x	x	
Domestic courts		Judiciary						x

It is reported that two agencies are principally responsible for watching corruption in the public sector: on the monitoring side, the Administrative Control Authority under the authority of the Prime minister and, on the judicial side, the Illegal Gains Department which answers to the Ministry of Justice.

Other prevention and enforcement agencies focus on public finances and the use of public funds: the Central Auditing Organisation, the Public Funds Investigation Police, and the Office of Public Prosecution (*i.e.* Attorney-General, Administrative Prosecution Authority, Public Funds Prosecution).

Since Egypt ratified the UN Convention Against Corruption (UNCAC) in February 2005, it has put in place a public hotline and two new anti-corruption units: the Transparency Unit at the Ministry of Investment and the Transparency and Integrity Committee (TIC) at the Ministry of Administrative Development. Article 6 of the Convention states:

“Each State Party shall grant the body or bodies [that prevent corruption] the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence.”

It does not otherwise seem ratification affected other bodies affected in their functions.

APP2.1. Administrative Auditing and Monitoring Authorities

*The Administrative Control Authority (ACA)*⁵⁹

The ACA is a government agency which has been operating since Law No. 54/1964, under the control of the Prime minister. The ACA is decentralised, with 23 regional offices (all with phone and fax numbers). They work in close co-operation with the Illegal Gains Department.⁶⁰

The ACA has very wide investigative powers for tracking corruption (and other failings) in the public sector. Its responsibilities include:

- detecting and preventing administrative and financial corruption,
- detecting and preventing offences by civil servants when on duty and the abuse of authority;
- studying press articles and other media coverage of issues revealing misconduct in public services;
- examining complaints received from citizens and public authorities.

The ACA refers alleged offenders to the Supreme State Security Courts, which are responsible for adjudicating cases of bribery of public officials.⁶¹

The ACA’s mandate is broad in scope. It supervises procedures in government organs, public sector enterprises, utilities, associations, and in the private sector or any entity entrusted with public sector contracts. Within this framework it investigates and, if need be, apprehends both active and passive bribery offenders. Law No. 54/1964 stipulates, however, that the ACA must obtain the consent of the Prime Minister in order to refer an employee to investigation.⁶²

The Central Auditing Organisation (CAO)

Pursuant to Law No. 144/1988, the CAO is “an independent organisation ... subordinated to the President of the Republic”. As Egypt’s main audit institution, its goals are to exercise control over the allocation of public funds, and assist Parliament in scrutiny. Central government, local authorities, entities which are least 25% publicly funded, and political parties are all subject to its jurisdiction.⁶³

Articles 2 and 5 of Law 144/1988 state that the CAO’s role is to:

- conduct financial audits from accounting and legal perspectives,
- monitor performance and follow up plan implementation;
- audit the legality of resolutions relating to financial offences.

The CAO was initially established by Law No. 129/1964 to monitor the financial and administrative operation of civil service agencies, companies, and banks receiving public funds. Under the terms of Law

No. 144/1988, the CAO no longer answered to Parliament, but to the President. Its annual reports on government and public institution expenditures are accessible only to the President, the Prime Minister, the Ministry of Finance, and Parliament.⁶⁴ Article 28 of Law 144/1988 states that the CAO is funded by a dedicated lump-sum budget (Article 28 of Law No. 144/1988) and has a full-time staff.

*The General Department of Public Funds Investigation Police (GDPF)*⁶⁵

The GDPF is affiliated to the Ministry of Interior and was established by Presidential Decree No. 10/1984. Its structure and organisation are determined by Ministerial Decree No. 167/1985 (Ministry of the Interior). While its missions are those of a police force, it does have a special bribery and corruption unit.

Transparency Unit at the Ministry of Investment

The UNDP has established a transparency unit within the Ministry of Investment, with the Netherlands donating USD 1.8 million. The purpose of the project is to support the Ministry of Investment in fighting corruption and the mismanagement of public resources and to improve relations with the private sector and foreign investors.⁶⁶ The centre has been active since June 2007 and, in partnership with Egyptian and Danish federations of industries, translated the anti-corruption manual produced by the Danish Federation of Industries into Arabic.⁶⁷

Transparency and Integrity Committee at the Ministry of Administrative Development (TIC)

Created by the Ministry of Administrative Development and its governance centre, the TIC is a permanent committee that studies and recommends means and mechanisms of enhancing transparency, accountability, and the fight against corruption at central and local government levels.

Ministerial Decree No. 86/2007 (Ministry of Administrative Development) sets out its functions. The TIC suggests strategies to fight corruption (complete with time frame and action plan), monitors and audits administrative corruption, and follows up Egypt's compliance with international obligations. In mid-2009 TIC was not independent, did not have its own dedicated budget, and had not been able to carry out its mandate.

APP2.2. Prosecuting and Judicial Authorities

Egypt's court system is inquisitorial (*niyaba*), with investigation and prosecution both carried out by public prosecutors.⁶⁸ Public prosecutors and magistrates with responsibilities in the fight against corruption are part of the judiciary, although they retain ties with the executive branch as they answer to the Ministry of Justice. The Attorney-General has responsibility for public prosecutions in areas like the misuse of public funds and bribery under the terms of Law No. 46/1972 (on judicial authority) and Law 31/1964 (police authority). The powers of prosecutors are set out in Law No. 150/1950 in accordance with criminal procedural law. In seeking to uncover bribery, prosecutors enjoy wide-ranging investigative powers.

Illegal Gains Department (IGD)

The IGD is governed by laws No. 11/1968, No. 2/1975 and No. 95/1980. Its mandate is to examine suspected illegal revenues and analyse asset disclosure forms. Public officials are required to disclose their assets and those of their spouses and children upon gaining office. However, the IGD does not investigate corruption cases, but passes them on to investigative authorities. In situations where asset disclosures are proven to be fraudulent, the IGD transfers the case to criminal courts.

The IGD receives reports of corruption from the members of the general public and from private and public employees. Due to the high number of cases, the IGD acts on complaints relatively slowly.⁶⁹

The Administrative Prosecution Authority (APA)

Law No. 117/1958 authorises the APA to monitor and investigate all civil servants of all ranks in all ministries and agencies. It investigates administrative and financial crimes and is empowered to investigate complaints and refer alleged perpetrators to the criminal courts. The APA also serves as an internal reporting mechanism to which public officials may direct their complaints or reports of corruption.⁷⁰

The APA has a full-time staff and, despite being placed under the authority of the Ministry of Justice and being staffed with state investigators, the Supreme Constitutional Court decided in June 2000 that the APA was a judicial authority.⁷¹

The Public Funds Prosecution (PFP)

Placed under the authority of the Attorney-General, the PFP is a prosecuting agency that investigates public fund offences, including corruption.

NOTES

¹ Friedrich Schneider estimated the Egyptian informal economy at over 35 per cent of the country's GNP in "Size and Measurement of the Informal Economy in 110 Countries around the World", July 2002

² Transparency and Integrity Committee (2008), "Action Priorities and its Mechanisms.

³ Transparency International's CPI ranks Egypt 115 out of 180 countries for corruption. Egypt scores 54 out of 100 on the overall Global Integrity scorecards. The Freedom from Corruption Index by the Heritage Foundation gives Egypt 29 out of 100, putting it bottom of the MENA region together with Syria, Libya, and Iran.

⁴ Egypt signed UNCAC on 9 December 2003 and ratified it on 25 February 2005. A gap analysis of the implementation of UN conventions on corruption and organised crime is currently being completed by the United Nations. Several ongoing programmes are involved, including the UNDP-Ministry of Investment joint programme. Egypt also ratified the UN Convention against Transnational Organised Crime (signed 13 December 2000, ratified 5 March 2004).

⁵ The project aims to contribute to legislative amendments in freedom of information, public awareness, and stakeholder engagement as regards corruption; to enhance capacity building and knowledge management; and to promote investment through enhanced transparency.

⁶ OECD (2007), results from the ministerial-level Steering Group Meeting in Activities and Achievements of the Working Group On Civil Service and Integrity. They were published as part of the initiative, Good Governance for Development (GfD) in Arab Countries, Results from the Steering Group.

⁷ Created in 2008 at the initiative of UNDP-POGAR, ACINET is the first common platform for governments and non-governmental players seeking to improve their capacities in the fight against corruption. ACINET was officially established on 30 July 2008 with the support of delegations from 17 Arab States, international organisations such as the League of Arab States, and the United Nations Office on Drugs and Crime and Transparency International. The objective is to initiate and support a region-wide policy dialogue on prevention measures under UNCAC. Regular meetings are carried out under the auspices of ACINET to share anti-corruption best practices in the Arab region. Sources: Initiative on Good Governance for Development in the Arab Countries www.arabgov-initiative.org/ and World Bank, <http://go.worldbank.org/8C6W6M86S0>

⁸ Egyptians Against Corruption, www.nadafa.org/en/

⁹ Egyptian jurisprudence defines public officials as "any person assigned to a permanent job in the service of a public utility managed by the State or a regional or utility public legal person and holding a permanent office that is part of the administrative organisation of such utility. Article 1 of the Law on State Civil Servants No. 47/1978 also provides that employees in governmental ministries, agencies and bodies of special budgets, local government units and public bodies should be regarded as public officials. Source: Egypt, UNDP, World Bank, Hassan H.M., Gamie S. (2009), The Legal and Institutional Framework of Combating Administrative Corruption in Egypt, unpublished.

¹⁰ In 2002 alone, as many as 48 high-ranking officials (including former cabinet ministers, provincial governors and members of parliament) were convicted of influence peddling, profiteering and embezzlement. More recently, at the end of 2004, an Egyptian court sentenced a close aide to a former minister to 10 years in prison for being guilty of taking USD 110 000 in bribes in connection with imports of insecticides and allowing French and Japanese companies to dominate the market. Source: MENA-OECD Task Force on Anti-Bribery, 2006 stocktaking report. Also: High-profile corruption cases were investigated in 2002 with "conviction in some instances, for several former government officials, including a former Minister of Finance, former head of the Egyptian Customs Authority, and the former Governor of Giza Province. Several businessmen and prominent bankers also have been charged." Sources: Buy USA, www.buyusa.gov and the Carnegie Endowment for Peace (2007).

¹¹ "Reporting" bribery takes place before the crime is uncovered; "confessing" occurs after the crime is uncovered.

¹² Article 110 of the Egyptian Criminal code requires judges to order the confiscation of bribes. Article 30 also provides for the seizure and confiscation of all proceeds and equipments used in the act of corruption.

¹³ United Nations, UNDP-POGAR (2004), Criminal Justice and Prosecution in the Arab World.; United Nations, UNDP-POGAR (2004), Structure of the Public Prosecution Office in Egypt.

¹⁴ Egypt, National Council for Human Rights (2009), Legislative Reform (2006-2007), Legislative committee.

¹⁵ Global Integrity Report 2008.

¹⁶ Ibid.

¹⁷ According to recent statistics within the ministry, a high number of calls were placed: 370 complaints through the public hotline, 450 complaints by e-mail, 40 complaints by mail. Source: Transparency and Integrity Committee's 2008 annual report.

¹⁸ Article 25 of the Code of Criminal Procedure established reporting as a right: "Whoever has information about the occurrence of a crime of which the public prosecution may file a lawsuit without a complaint or a request may report such information to the public prosecution or any of the judicial officers." Article 26 mandates public officials to report "any public official or person assigned a public service who knows during or due to the work thereof of a crime that the public prosecution may pursue without a complaint or a request shall report such crime immediately to the public prosecution of the nearest judicial officer".

¹⁹ Law No. 2/1977 establishing the Illegal Gains Department. Source: Global Integrity Report. Comp.: Article 10 of Law No. 80/2002 on money laundering provides for no criminal liability action when reporting in good faith, and no civil liability action when suspicion is based on reasonable grounds.

²⁰ According to Global Integrity 2008, this makes citizens and public servants afraid of actually reporting corruption cases they may be aware and renders the Illegal Gains Department ineffective in practice.

²¹ Egypt, UNDP, World Bank, Hassan H.M., Gamie S. (2009), The Legal and Institutional Framework of Combating Administrative Corruption in Egypt, unpublished, p. 24.

²² Ibid.

²³ Different sources supplied different information. The MENAFATF Mutual Evaluation Report of Egypt mentions 1 263 reported cases of corruption and bribery in 2004, 1 267 in 2005, 1 353 in 2006, and 1 616 in 2007. Source: MENA-FATF (2009), Mutual Evaluation Report – Egypt. Anti-money laundering and Combating the Financing of Terrorism. Other figures reported by the MENA-OECD Investment Programme's consultant are much higher. In 2008, 365 000 corruption offences were reported, of which 33 000 were prosecuted. In 2002-7, 75 000 corruption cases were investigated (including 10 000 for serious crimes). In 2005, the total number of corruption cases reached 72 593, including 10 853 of crimes, particularly public money embezzlement, seizure, bribery or forgery. Source: Egyptian coalition opposition group, Kefaya. www.ikhwanweb.com/lib/Kefayafasad.doc, Corruption in Egypt: A Black Cloud That Never Passes.

²⁴ The issue was reported in the 2008 Annual Report of the Transparency and Integrity Committee.

²⁵ United Nations (2005), *Common Country Assessment, Embracing the Spirit of the Millennium Declaration, Egypt*.

²⁶ This happened, for example, in a bribery case involving a judge and several other defendants, including a businessman who had arranged payment of bribes to the judge in exchange for lenient sentences or acquittals for defendants in his court. Although the businessman and the judge were given prison sentences of 15 to 25 years for the active and passive bribery offences of which they were convicted, the court acquitted seven defendants in accordance with Egypt's Penal Code provision that pardons individuals involved in bribery if they bring it to the attention of the authorities before the initiation of criminal proceedings or present crucial evidence in court. Source: OECD (2006), Business Ethics and Anti-bribery policies in selected MENA countries, MENA Taskforce on Anti-Bribery, MENA-OECD Investment programme (stocktaking report).

²⁷ Response from Egyptian Government.

²⁸ OECD (2006), Business Ethics and Anti-bribery policies in selected MENA countries, MENA Taskforce on anti-bribery, MENA-OECD Investment programme (stocktaking report).

²⁹ For confirmation of the lack of coordination and the overlap of jurisdictions between all the institutions involved, see Hassan H.M., Gamie S. (2009), The Legal and Institutional Framework of Combating Administrative Corruption in Egypt, unpublished.

³⁰ Response from Egyptian Government

³¹ Global Integrity Report, Reporter's Notebook, 2008

³² Egypt, Ministry of Finance (2005), Activities and Achievements.

³³ Doing Business (2007), Ramahlo R., Case Study – Egypt, Adding a Million Taxpayers.

³⁴ One example is USAID's 2003 technical assistance project with a customs revenue unit which set up an implementation plan identifying weaknesses in the customs system.

³⁵ Doing Business (2009), Country profile for Egypt, p. 37. Egypt ranks 26th out of 178 countries in the Trading Across Borders Indicator of Doing Business.

³⁶ OECD (2007), Bribery in Public Procurement: Methods, Actors and Counter-Measures.

³⁷ Global Integrity Scorecard: Egypt 2008.

³⁸ The website of the government's public procurement portal is www.etenders.gov.eg. It is in Arabic.

³⁹ Article 14 of Law No. 120/1982 Regulating the Activities of Commercial Agents and Certain Activities of Commercial Intermediaries provides: "The ministries and organs of the government, the units of local governments, the public institutions and the companies and the units of the public sector shall, when making contracts, include in the tender a provision concerning the amount of the commission or brokerage payable to the commercial agent or commercial intermediary when the contract is awarded, as well as the person(s) who will receive the sum, and requiring to deposit such sum for the account of the person entitled thereto in a bank operating in the Arab Republic of Egypt which is subject to the Central Bank's supervision and in the currency agreed by the parties." Source: MENA-OECD Task Force on Anti-Bribery, 2006 stocktaking report.

⁴⁰ Article 16 of Law No. 120/1982.

⁴¹ The Global Integrity Report 2008 gives a score of zero to Egypt for access to information. Strong civil society activity is reported in Egypt, compensating for the lack of access to public information. Source: U4 (2007), Overview of Corruption in MENA Countries.

⁴² Article 47 of the Egyptian constitution guarantees freedom of individual speech. Article 48 guarantees independence of the media as a whole and forbids censorship (with exception of national emergency). Article 206 states that the "press is a public independent authority that delivers its message according to Constitution and Law". Article 207 states that "the press shall deliver its message unrestricted and independently so as to serve society by all means of expression that reflect the tendencies of public opinion and help shaping and directing it".

⁴³ Thirty-two, sometimes broad, counts of incrimination apply to the press: defamation and libel, publication of fake / biased rumours, disconcerting propaganda, violation of public morality, without necessarily requiring the proof of malicious intent – see the Penal Code, the press, law on publications, etc. A draft press law was introduced in 2006 again providing for the imprisonment of journalists (defamation charges) who denounced acts of corruption.

⁴⁴ Reporters Without Borders, Global Integrity Report 2008

⁴⁵ See also, Transparency and Integrity Committee, Annual Report, 2008

⁴⁶ www.mobinil.com/aboutmobinil/CodeofConduct.pdf

⁴⁷ www.egytrans.com/ethics.html

⁴⁸ www.siemens.com.eg/en/Compliance_eg.asp

⁴⁹ www.siemens.com.eg/Content/Aboutus/Business_Conduct/Business%20Conduct%20Guideline%202009.pdf

⁵⁰ Centre for International Private Enterprise (2009), Business Environment for SMEs in Egypt and SME's interaction with Government agencies – 2009 Survey on Corruption.

⁵¹ MENA-OECD Task force on Anti-Bribery, 2006 stocktaking report, clause 61: "An IMF Report on the Observance of Standards and Codes (ROSC): Accounting and Auditing in Egypt, issued in August 2002, noted that, due to some ambiguity in the legal provisions about the civil or criminal liabilities of parties responsible for supplying misleading or incorrect information in audited financial statements, Egyptian accountants and auditors faced virtual immunity for their professional misconduct." All companies registered under Company Law 159/1981 are required to prepare annual audited financial statements in compliance with the accounting and auditing standards enshrined in the Accounting Practice Law 133/1951 and Capital Market Law 95/1992.

⁵² http://eiodqa.eiod.org/UploadedPdfFiles/egyptiancodeofcorporategovernance_eng.pdf

⁵³ http://eiodqa.eiod.org/UploadedPdfFiles/egyptsoecodeofcg_En.pdf

⁵⁴ TIC Annual Report 2008

⁵⁵ Globalex, www.nyulawglobal.org/Globalex/Egypt1.htm

⁵⁶ MENA-OECD Task Force on Anti-Bribery, 2006 Stocktaking Report.

⁵⁷ Petition to the Human Rights Committee. Exception: Naseem Abdel Malek, civilian sentenced before a military tribunal to life imprisonment for bribery (determined by the Human Rights Committee to be arbitrary detention, opinion in Case No. 10/99).

⁵⁸ Article 14 of Comp. Law No. 80/2002 on money laundering: imprisonment not exceeding seven years, and fine twice the value of the property involved in the offence.

⁵⁹ www.rekaba.com/english/english.html

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- ⁶⁰ The creation of an ombudsman under the authority of the ACA is under consideration. Source: Transparency and Integrity Committee (2008).
- ⁶¹ Carnegie Endowment for International Peace (2007), Arab Political Systems: Baseline Information and Reforms – Egypt. For cases, see also Global integrity report 2008, p. 4-5.
- ⁶² Egypt, UNDP, World Bank, Hassan H.M., Gamie S. (2009), The Legal and Institutional Framework of Combating Administrative Corruption in Egypt, unpublished, p. 37.
- ⁶³ Central Auditing Organisation website, <http://www.cao.gov.eg/> (in Arabic).
- ⁶⁴ Article 18 of Law No. 144/1988 as amended by Law No. 157/1998. Sources: Business Anti-Corruption Portal, Global Integrity Report 2008
- ⁶⁵ www.moiegypt.gov.eg/english/departments%20sites/publicfunds/generaldepartment/
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- ⁶⁸ United Nations, UNDP-POGAR (2004), Criminal Justice and Prosecution in the Arab World.
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- ⁷⁰ Business Anti-Corruption Portal and Global Integrity Report 2008.
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ANNEX TO ANTI-CORRUPTION

A1. ASSESSOR INFORMATION

Name:	
Organisation/Ministry/Agency:	
Title/Position:	
E-mail:	
Phone:	
Fax:	
Mailing Address:	
Date of Assessment:	

A2. KEY DATA

Anti-Corruption and Related International Instruments

Governments from around the world are encouraged to sign and ratify anti-corruption instruments. The United Nations Convention Against Corruption (UNCAC) is a key entry point for anti-corruption efforts in the Arab region. Other international instruments, including the Council of Europe's instruments against corruption or the OECD Convention to Fight Corruption of Foreign Public Officials in International Business Transactions may be relevant as they are open to accession and impact on international business operations.

Corruption is frequently associated with other crimes and malpractices and a number of international efforts and instruments have been developed to prevent, detect, investigate and prosecute those malpractices, including in particular money laundering, transnational organised crime or illicit traffic of narcotics and drugs.

To promote action, parties to international or regional anti-corruption instruments participate in regional or international forums where they review, among peers, their anti-corruption actions.

Please indicate your country's significant anti-corruption and related international instruments:

Names of instruments				
Date signed				
Date ratified				
Related implementation and enforcement forums in which your country participates				

Bodies and Personnel Involved in Fighting Corruption

Please indicate whether there are different bodies in charge of preventing, detecting, investigating and prosecuting corruption. List them by name and state their responsibilities. Mention staff members in those agencies involved in the fight against corruption. Finally, please give an indication of the means provided to staff to fight corruption.

	Name of the government agency	Total number of staff			Number of persons involved in fighting corruption			Means to fight corruption
		2006	2007	2008	2006	2007	2008	
Anti-corruption prevention agency								
Ministry of Interior/Police								
Prosecution Office								

Other law enforcement bodies (please list)								
<i>If internal investigation units exist in:</i>								
Tax administration								
Customs administration								
Public procurement bodies								
Privatisation bodies (if applicable)								
Other – please specify								

Awareness-Raising to Prevent Corruption and Enhance Integrity

	Name of the government agency	Total number of staff of the institution trained in anti-corruption and integrity – please indicate year			Information made publicly available (guidelines and law enforcement information) by those institutions integrity – please indicate year			Consultations or training seminars organised with different stakeholders (please clarify number of events and number of participants) integrity – please indicate year		
		2006	2007	2008	2006	2007	2008	2006	2007	2008
Anti-corruption prevention agency										
Ministry of Interior/Police										
Prosecution Office										
Judiciary										
Other law enforcement bodies listed in the former session										
Tax administration										
Customs administration										

Public procurement bodies										
Privatisation bodies (if applicable)										
Other - specify										

Statistics on the Enforcement of Criminal Legislation on Corruption

The collection and dissemination of statistics on corruption offences is important for many reasons. Statistics allow a country to demonstrate its commitment and to substantiate its practical efforts to fight bribery and corruption. Statistics also allow effective evaluation of the implementation and enforcement of domestic anti-corruption provisions.

1. Data on Corruption Crimes

Type of offence	2006 number of investigations/prosecutions		2007 number of investigations/prosecutions		2008 number of investigations/prosecutions	
Passive bribery¹ of domestic officials						
Active domestic bribery² of public officials						
if relevant please also provide information on: influence peddling; embezzlement, misappropriation and other diversion of property; illicit enrichment; false accounting; other offences considered corruption offences in your jurisdiction³						

2. Penalties Applied in 2007 and 2008

¹ Please refer to Section 1.2 for the definition of “passive bribery”.

² Please refer to Section 1.2 for a definition of “active bribery”.

³ Refer to Section 1.2 for a more detailed consideration of active and passive bribery.

Criminal sanctions (2007/2008)	Natural persons (number)	Highest terms (fines & prison)	Legal persons (number)	Highest terms (fines)
Passive bribery of domestic officials				
Active domestic bribery of public officials				
Active bribery of foreign public officials				
If relevant please also provide information on other corruption offences				
Administrative and civil sanctions please specify the offences and the sanction imposed				

3. Other Data

- Please specify the definition of “Public Official” under the different legislations dealing with corruption.
- Please specify if there are statutes of limitations applicable to the different corruption crimes listed above (active bribery, passive bribery, trading in influence; embezzlement, misappropriation and other diversion of property; illicit enrichment; false accounting; as well as other offences considered corruption offences in your jurisdiction).

A3. GENERAL OBSERVATIONS

To be filled in by the Assessor:

Please use this space to include any additional observations regarding the assessment of this policy dimension.

A4. OVERVIEW OF SCORES

II.1 ANTI-CORRUPTION		SCORE
1.1	Anti-Corruption Strategy	
1.1.1	Stocktaking the Corruption Situation	1
1.1.2	Existence of an Anti-Corruption Strategy	2.5
1.1.3	Stakeholder Participation	2
1.2	Criminalisation of Corruption	
1.2.1	Defining Corruption-Related Offences	3.5
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1.2.3	Immunities	2.5
1.2.4	Sanctions and Confiscation	2.5
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1.3	Enforcing Domestic Anti-corruption Provisions	
1.3.1	Control and Detection	2.5
1.3.2	Reporting	2
1.3.3	Collecting Statistics on Corruption Offences	1.5
1.3.4	Implementing and Enforcing Sanctions	1
1.4	People and Public Institutions Involved in the Fight Against Corruption	
1.4.1	Independence of the Judiciary	2
1.4.2	Accountable, Responsible Institutions to Fight Corruption	2
1.4.3	Inter-agency Co-ordination and Co-operation	2
1.4.4	Tax Administration	2
1.4.5	Customs Administration	2
1.4.6	Public Procurement	
	a) Framework and Process	2
	b) Reducing Corruption Risks	1.5
1.4.7	Awareness Raising and Public Education	2
1.4.8	The Media: a Means to Expose Malpractice	2
1.5	Private Sector Actions to Stem Corruption	

1.5.1	Private Codes of Conduct	2
1.5.2	Compliance Programs	2
1.5.3	Non-financial Reporting	1

A5. ASSESSMENT FRAMEWORK

A5.1. Introduction

Establishing an enabling business environment with a view to improving opportunities for economic growth, investment, and job creation remains a challenge for countries. Although governments have started to improve their business climates through economic and regulatory reforms, much more can and should be done.

Anti-corruption and business integrity have been identified as critical to a country's development and investment performance. Economic theory, supported by empirical evidence, testifies that bribery and corruption are major deterrents to investment. Indeed, such malpractices create unforeseeable costs for businesses and prevent them from operating on a level playing field. If the regulatory environment is unclear – whether over- or under-regulated – officials may abuse their discretionary powers and seek to enrich themselves through corruption. This has widespread detrimental effects – it increases the cost of doing business, distorts the allocation of resources, and undermines growth.

Real or perceived corruption risks heighten companies' concerns over engaging in business relations. Beyond the direct economic cost corruption represents for a company, it also carries increasing legal risks and can threaten their reputations. Today, companies are bound by international integrity provisions which may have consequences on business operations beyond national boundaries. Companies operating abroad dread being held liable for corrupt behaviour by employees, agents, or subcontractors. Recent highly publicised bribery scandals illustrate how unethical conduct severely affects companies' financial situations through damage to their reputations and increased government enforcement. Moreover, penalties for breaking foreign bribery rules can run into USD millions and are applied even to multinational companies operating worldwide – as recent examples again demonstrate. Corruption risks have become an inescapable reality in the minds of executives who are increasingly concerned to ensure business integrity in their operations and the markets in which they intervene.

The *Framework to Assess Anti-Corruption Policies and Practice* describes a structure and provides a set of indicators that serve as a basis for the Business Climate Development Strategy (BCDS). Its objective is to supply governments with a framework to evaluate their policies and practices in the fight against corruption. Attention is given primarily to policy components aimed at the corruption of government officials. However, action in the private sector is also given consideration in light of its increasing relevance to the prevention of corruption.

The proposed framework is built on five major pillars, of which the first four relate to government actions. The chapter leads with what may be termed as a “strategy” to fight corruption. It then reviews the domestic provisions introduced to combat criminal corruption and major related crimes. Then it looks at the extent to which the government has been able to enforce its anti-corruption policy. Consideration is also given, in this context, to human and institutional approaches which will have to be compatible with a country's anti-corruption strategy and provisions. The fifth dimension briefly looks at what the private sector can do to prevent bribery and corruption.

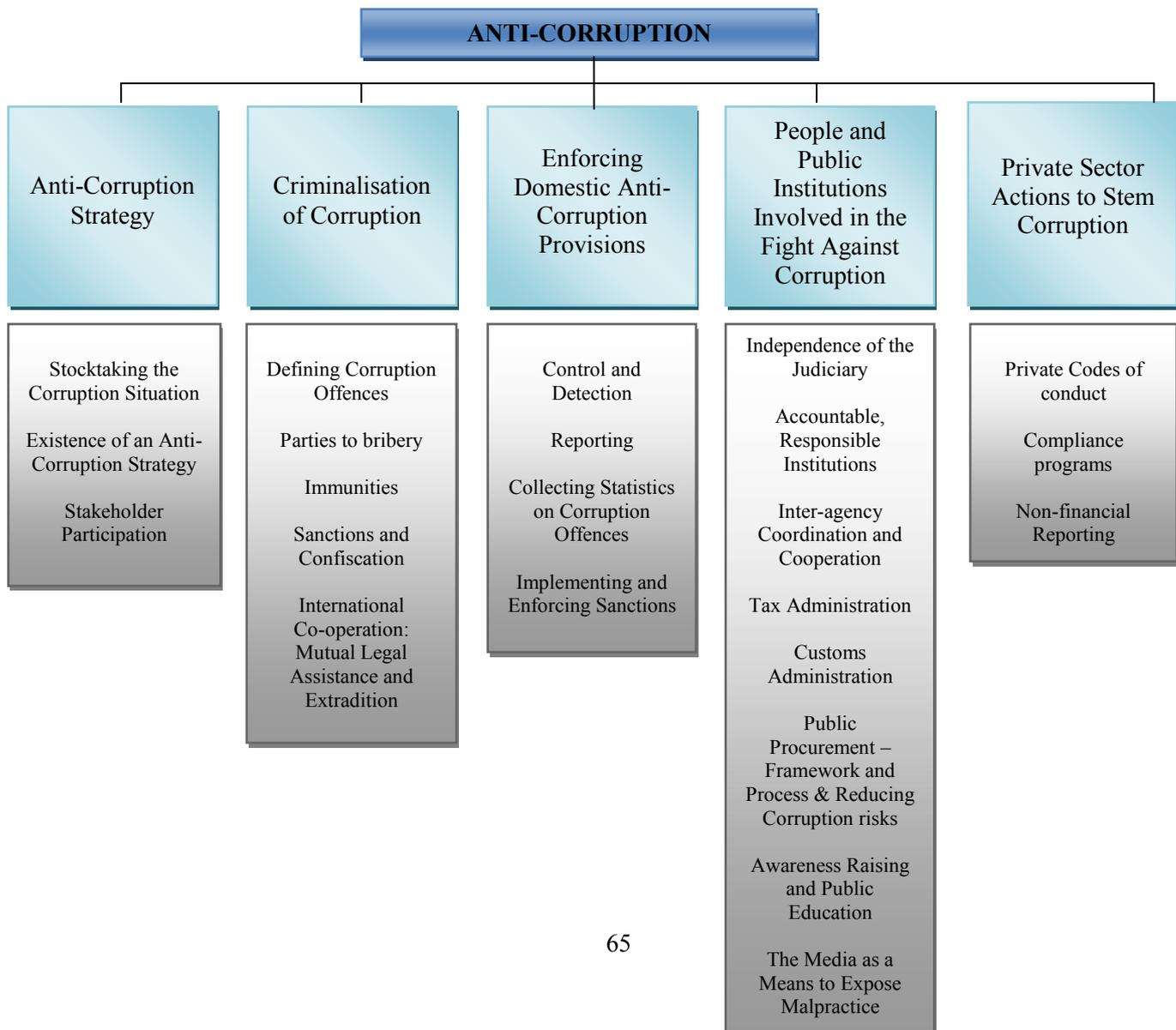
A5.2. Objective and Scope of the Anti-Corruption Assessment Framework

A country's anti-corruption policies and programmes are assessed against the framework set out below. The framework identifies five key pillars, each of which comprises a set of indicators. The combination of good practices in the elements listed under each of the pillars – anti-corruption strategy, criminalisation of corruption, enforcement, people and institutions, as well as preventive private sector measures – are generally considered essential to fighting corruption in business transactions.

The framework is designed to give an overall picture of a the corruption situation in a county; it does not seek to capture every detail of its anti-corruption policy. For instance, some particularities of domestic legislation may not be reflected. The focus of the work is on public officials' corruption. Moreover, while integrity in public life is undeniably a prerequisite for public trust and a keystone of good governance, the chapter does not aim at a comprehensive review of the legal, regulatory, and procedural framework which governments may establish to enhance transparency and integrity and prevent corruption.

N.B.: The framework is designed to structure action taken by the government. The latter term is understood in the widest possible sense to include all institutions that have the authority to make and the power to enforce laws, regulations, or rules. The term refers to local, provincial, and national government.

Figure A1. The anti-corruption assessment framework



A5.3. Measurement

Fighting corruption among public officials is a long-term undertaking that requires a variety of well-designed counter-measures. What matters most, however, is that the government should genuinely commit to fighting corruption and put in place measures to:

- ensure goods and services are obtained in a transparent, non-discriminatory manner;
- incentivise honesty;
- deter bribery.

Below are some of the key indicators used to assess how effective countries' anti-corruption frameworks are. MENA countries' policies and practices are examined against them.

Anti-Corruption Strategy

- 1. Stocktaking the Corruption Situation**
- 2. Existence of an Anti-Corruption Strategy**
- 3. Stakeholder Participation**

Criminalisation of Corruption

- 1. Defining Corruption-Related Offences**
- 2. Parties to bribery**
- 3. Immunities**
- 4. Sanctions and Confiscation**
- 5. International Co-operation: Mutual Legal Assistance and Extradition**

Enforcing Domestic Anti-corruption Provisions

- 1. Control and Detection**
- 2. Reporting**
- 3. Collecting Statistics on Corruption Offences**
- 4. Implementing and Enforcing Sanctions**

People and Public Institutions Involved in Fighting Corruption

- 1. Independence of the Judiciary**
- 2. Accountable, Responsible Institutions**
- 3. Inter-agency Co-ordination and Co-operation**
- 4. Tax Administration**
- 5. Customs Administration**
- 6. Public Procurement**
 - a) Framework and Process
 - b) Reducing Corruption Risks
- 7. Awareness Raising and Public Education**
- 8. The Media: a Means to Expose Malpractice**

Preventive Private Sector Actions to Stem Corruption

- 1. Private Codes of Conduct**
- 2. Compliance programs**
- 3. Non-financial Reporting**

Anti-Corruption Strategy

Corruption, commonly defined as the abuse of authority for private benefit, is clandestine by its very nature. As such, it is difficult to estimate the magnitude of malpractice and to design countervailing policies.

Stocktaking the Corruption Situation

Governments must seek evidence of degrees and patterns of corruption in order to design, monitor, and adjust their anti-corruption strategies and policies. Questionnaire-based perception surveys generally produce the most realistic measurements. Public opinion surveys, complemented by sociological studies, risk assessments, and statistical data on the enforcement of anti-corruption laws may guide the government in its anti-corruption policy and strategy.

Governments can carry out anti-corruption surveys and studies themselves. But they also frequently ask national non-government organisations (NGOs) and international institutions to conduct public opinion polls and sociological studies.

Questions

Is the government carrying out corruption surveys (including sociological studies / public opinion polls) and trying to collect evidence about corruption?

Are there specific structures or institutions tasked with collecting this evidence through surveys?

Is the government using survey findings to appreciate to what extent the anti-corruption measures it has introduced are effective in fighting corruption?

Does the government regularly carry out reviews in order to measure progress?

Are the surveys or parts thereof made public?

1.1 ANTI-CORRUPTION STRATEGY					
	Level 1	Level 2	Level 3	Level 4	Level 5
1.1.1 Stocktaking the Corruption Situation	The government has neither carried out corruption surveys nor mandated specialised organisations to do so.	The government – or an adequate organisation mandated by the government – has surveyed the general domestic corruption situation.	The government carries out – or mandates an adequate organisation – to regularly survey the general corruption situation.	The government completes regular corruption surveys by industry and key administration and/or on the enforcement of anti-corruption laws and regulations.	The government publishes surveys which monitor domestic corruption and the effectiveness of the country's anti-corruption measures.

Existence of an Anti-Corruption Strategy

It is desirable that countries, in particular those faced with widespread corruption, should make the fight against corruption a national priority. The strategy should be supported by a practical action plan, which communicates a clear and strong message about the government’s priorities. The plan may pay particular attention to activities and arms of government most exposed to corruption risks such as tax, customs, public procurement, and the judiciary. It may also use a targeted implementation milestones or criteria for assessing whether the objectives have been met. To ensure that government strategies and actions are implemented and that allocated resources are effectively used to fight corruption, it is essential that the government regularly review its actions and resulting progress.

Questions

Has the government expressed a clear political will to fight corruption and made the fight against corruption a priority on the political agenda? Has the government adopted a strategy in this regard?

How has the government defined the strategy?

Is the strategy complemented by an anti-corruption action plan which sets out clearly defined steps as well as a precise deadline? Has the government assigned specific budgets and designated officials to take charge of the task?

Has the government initiated the implementation of its strategy in accordance with the action plan? Does the government monitor the implementation of its strategy and action plan?

1.1 ANTI-CORRUPTION STRATEGY					
	Level 1	Level 2	Level 3	Level 4	Level 5
1.1.2 Existence of an Anti-Corruption Strategy	The government has not declared the fight against corruption a priority and has defined no anti-corruption strategy.	The government has expressed its political will to fight corruption.	The government has expressed its political will to fight corruption and defined an anti-corruption strategy reflected in a formal policy document which defines specific anti-corruption objectives and priority areas.	The government initiated the implementation of the national strategy in accordance with a concrete action plan. The latter contains a number of clearly defined objectives to be achieved as well as timelines of implementation.	In addition to 4, the government has set up a permanent body with the necessary budget to regularly and systematically monitor the implementation of the national anti-corruption strategy as well as the related action plan.

Stakeholder Participation

The involvement of the public in anti-corruption efforts is a factor of success, especially in countries where accountability mechanisms for public institutions are still in the making. Mechanisms for enhancing public participation in anti-corruption work can involve (in ascending order of importance):

- informing the public about the government's anti-corruption plans or measures (*e.g.* through press conferences, publication on governmental special websites);
- responding to public inquiries (*e.g.* telephone or electronic lines, open hours for public meetings, rules for public officials to respond to public inquiries);
- holding public consultations (*e.g.* discussions of draft programmes or laws);
- setting up temporary or permanent structures for dialogue between the government and citizens (*e.g.* anti-corruption working groups, councils or commissions with representatives of the government and the public);
- involving civil society representatives directly in the development of policy or legal documents as experts (*e.g.* citizens participate as experts in the legal drafting, or act as observers in governmental discussions or actions, such as the public procurement process).

Through the disclosure of public information and the involvement of the public, the government can enable a wide range of stakeholders to engage in a "social audit" of its actions to fight bribery and corruption.

Questions

Has the government involved the public in its anti-corruption strategy?

Is the public informed about anti-corruption measures and plans implemented by the governments and do dialogue and consultation structures with the public exist?

Has the government introduced means through which the public could inquire about how to report corruption suspicions?

Are civil society representatives involved in governmental efforts to fight corruption and bribery, and if so how?

1.1 ANTI-CORRUPTION STRATEGY					
	Level 1	Level 2	Level 3	Level 4	Level 5
1.1.3 Stakeholder Participation	<p>Any possible anti-corruption actions by the government are confidential. The public at large is not informed about the government's anti-corruption strategy and relating integrity and anti-corruption laws and regulations.</p>	<p>Some of the actions and measures adopted by the government to fight corruption are public.</p>	<p>The government seeks to inform the public. In particular it occasionally meets different stakeholders to inform them about its integrity and anti-corruption provisions and measures.</p>	<p>The government has set up formal structures which it uses regularly to engage in a dialogue with non-government representatives on integrity and anti-corruption provisions and measures.</p>	<p>The government regularly consults with various stakeholders, including non-government representatives and involves them in a systematic manner in the development of its anti-corruption policy.</p>

Criminalisation of Corruption

To fight corruption effectively, the priority needs to be given to the establishment of a coherent legal framework, which ensures that corruption is a criminal offence under domestic law. Criminalisation of corruption has a clear and potentially strong impact on actions outside the criminal law sphere.

Governments from around the world are encouraged to sign and ratify international integrity and anti-corruption instruments. The United Nations Convention Against Corruption (UNCAC), the most recent and comprehensive anti-corruption instrument, is the latest international instrument relevant to the region. However, corruption is frequently associated with other crimes and malpractices and a number of international efforts and instruments have been developed to prevent, detect, investigate and prosecute malpractices like money laundering, transnational organised crime, or the illicit traffic of narcotics and drugs.

When countries sign up to international agreements on corruption, they must bring their legislation into conformity with the agreements' anti-corruption standards. Most countries need to upgrade their laws on criminalising bribery and related offences. They also need to ensure that their institutional framework is adequate and in line with their international commitment(s).

Defining Corruption-Related Offences

Being able to operate properly in a predictable environment is a necessity as businesses compete globally. Companies must be able to seek new opportunities in all confidence without exposing themselves to undue risk.

A factor that contributes to a secure, predictable business environment is the proper definition of public officials' corruption offences. Definitions should cover the acts of "giving, offering, promising" a bribe (active bribery) as well as the "taking, requesting and accepting" of bribes (passive bribery). The offence should make explicit that bribery covers financial or any other undue advantage. The "undue" advantage may be economic or non-material in nature (e.g. money or loans, as well as holidays, entertainment, and career improvements).

Fighting corruption generally also calls for the criminalisation of other acts. They include influence peddling, embezzlement, misappropriation or diversion of property, funds, securities, or any other item of value entrusted to a public official in his or her official capacity, for the official's benefit or the benefit of others. Influence peddling entails a person requesting or accepting a bribe, or other undue advantage, in return for promise to influence a public official. Other offences that should be penalised are abuse of function and illicit enrichment.

Questions

Is bribery a criminal offence under domestic legislation?

Does the bribery offence cover both active and passive bribery?

Does domestic legislation criminalise the bribery of (foreign) public officials? Does domestic legislation also criminalise other corruption-related acts like embezzlement, the misappropriation or diversion of property entrusted to public officials, active and passive trading in influence, and abuse of function?

Does the existing law preclude such lines of defence as effective regret or pressure on individuals?

1.2 CRIMINALISATION OF CORRUPTION					
1.2.1 Defining Corruption Offences	Level 1	Level 2	Level 3	Level 4	Level 5
		No criminal law provisions regulate bribery and corruption.	Domestic law establishes that requesting (solicitation), receiving and accepting an undue advantage is a criminal offence (also called passive offence) and that offering, promising and giving a financial or other undue advantage is a criminal offence (also called active offence).	In addition to the above, other acts are criminalised such as embezzlement, misappropriation or diversion of property by a public official.	In addition to the above, the active and passive trading in influence are criminal offences as well as the abuse of functions or the illicit enrichment by a public official.

Parties to Bribery

When referring to the bribery of a public official, the criminal law provision needs to give a clear definition of the meaning of “public official”. The absence of such a definition can create uncertainty about the scope of the offence. Consequently, the definition of “public official” should be worded in such a manner as to encompass all categories of officials that could fall under criminal sanctions for corruption-related offences. In particular, it needs to be clear whether all persons holding a legislative, administrative or judicial office, whether appointed or elected, as well as any person exercising a public function, including for a public agency or public enterprise, are covered.

The bribe may not be given directly to the official but can be given to a third party, such as a relative, an organisation to which the official belongs or the political party of which the public official is a member. It is therefore essential to expressly cover bribery for the benefit of a third person.

Corrupt transactions generally involve a high-level of confidentiality and secrecy. To ensure an arms-length distance between the briber and the public official, bribes are frequently transferred by agents, intermediary, consultants etc. The latter can be a natural person or a corporate vehicle. In order to prevent the intervention of such kind of actors in a hidden bribery transaction, their intervention may be regulated and their specific role in a bribery transaction prohibited and sanctioned.

Questions

Does the law provide a clear definition of what a “public official” is and if so, does this definition encompass all categories (legislative, administrative, judicial)? Besides, does the offence apply to the active and passive bribery of third beneficiaries (e.g. wife, children, political party etc.) or when the bribe is transmitted indirectly through intermediaries?

1.2 CRIMINALISATION OF CORRUPTION					
	Level 1	Level 2	Level 3	Level 4	Level 5
1.2.2 Parties to Bribery	The law does not define the notion of “public official” who could be involved in a bribery transaction.	The law includes a definition of the notion of “public official” as beneficiary of a bribe. The concept of “public official” includes persons holding legislative, administrative or judicial office at all levels of government.	In addition to 2, directing the advantage (bribe) to a third party beneficiary is an offence.	Intermediation and intervention by agents on behalf of companies involved in government contracts are regulated (intermediaries may either be prohibited or required to register) and the law establishes that it is an offence to carry out the bribe through intermediaries.	In addition to 4, the law contains a definition of the concept of “foreign” public official.

Immunities

Given the secret, confidential nature of the offences and difficulties that often arise in investigating corruption-related acts, it is important that criminal law, when referring to bribery of a public official, provides a clear understanding of which persons are subject to criminal liability. Some may be exempted, at least temporarily, due to the existence of immunities or privileges.

- Immunities apply even though the offender has been caught in the act of bribery (*in flagrante delicto*).
- Immunities apply to a large number of officials.
- Immunities are functional (*i.e.* they apply to acts performed by an official in the discharge of his or her official duties).
- Immunities can be lifted and rules define the circumstances under which they can be lifted.
- Immunities are a reason for the suspension or interruption of limitation periods.

Questions

Do immunities apply to a significant number of officials? What are the categories of public officials who benefit from immunity?

What is the nature of these immunities and are they likely to be lifted under certain circumstances?

Are immunities a motive for suspending or interrupting limitation periods?

1.2 CRIMINALISATION OF CORRUPTION					
	Level 1	Level 2	Level 3	Level 4	Level 5
1.2.3 Immunities	Immunities apply although the offender has been caught in the act of bribery (<i>in flagrante delicto</i>).	Immunities apply to a large number of officials.	Immunities are functional (<i>i.e.</i> they apply to acts performed by an official in the discharge of his or her official duties).	Immunities can be lifted and rules define the circumstances under which they can be lifted.	Immunities are a reason for the suspension or interruption of limitation periods.

Sanctions and Confiscation

Penalties for bribe taking (passive bribery) are often light, e.g. small fines. Giving a bribe (active bribery) is considered a lesser crime in many countries, and sanctions are sometimes disproportionately light. To fight corruption effectively, it is essential that the law establishes effective, proportionate and dissuasive sanctions – in other words, sanctions should be heavy for bribery, as they for other serious crimes.

To effectively deter and fight corruption it is essential to sanction all parties to an act. They might be the agents of a company, but the company itself should also be held responsible. While some countries do hold corporations liable to civil and administrative sanctions, it is increasingly accepted in national legal system that companies should be liable corporate criminal sanctions.

Legislation also needs to provide intermediate measures to identify, trace, freeze, and seize the proceeds and instruments of corruption, and, ultimately, to confiscate the proceeds. In other words, bribes and any profit therefrom must be confiscated. Confiscated proceeds may be moneys, physical objects (possibly purchased with the proceeds of a bribe), or intangible assets (e.g. shares in a company).

Questions

Is passive and active bribery liable to sanctions with provisions for identifying, tracing, and freezing the proceeds and seizing the instruments of corruption?

Are all responsible parties to an act of corruption, be they natural or legal persons, likely to be sanctioned? Are legal persons liable for corruption offences under criminal, administrative, or civil law?

Is the liability of legal persons triggered by the acts of specific persons in the company (director, senior managers)? Or is a legal person also liable without the decision-making natural person having been identified?

Does the liability of legal persons for corruption offences also apply to state-owned and state-controlled companies? Does the legislation confiscate these?

1.2 CRIMINALISATION OF CORRUPTION					
	Level 1	Level 2	Level 3	Level 4	Level 5
1.2.4 Sanctions and Confiscation	No criminal sanctions are applied to bribery and corruption-related offences.	Active and passive bribery are sanctioned, although the sanctions are not effective or dissuasive.	Sanctions for active and passive bribery, as well as other corruption offences, are heavy and comparable to those applicable for other economic crimes (such as theft).	In addition to 3, legal persons can be sanctioned (the liability of legal persons may be criminal, civil or administrative).	Forfeiture or confiscation of the bribe and the proceeds of the bribe are available. (Or equivalent fines or damages can be applied).

International Co-operation: Mutual Legal Assistance and Extradition

Large-scale corruption often has an international dimension, be it that the briber is domiciled abroad, that the proceeds of the crime have been exported, or that the offender has fled the country.

International standards need to be compatible between parties and effective extradition, and mutual legal assistance (MLA) provisions need to be in place. Countries may seek or provide extradition and MLA in corruption cases through different types of arrangements (bilateral or multilateral treaties or conventions).

Regardless of the type of co-operation arrangement, legal frameworks generally impose preconditions. A condition worthy of examination in this assessment is whether countries that refuse the extradition of nationals submit the case to the competent domestic authorities for prosecution. Furthermore, countries may invoke dual criminality, which implies that co-operation will be refused if the requesting state investigates an offence that does not exist in the requested state. Access to financial information is of paramount importance for the effective investigation of corruption crimes. Another major hindrance in international corruption investigations and prosecutions relates to the decision of countries not to render mutual legal assistance for criminal matters on the grounds of bank secrecy.

Questions

Does the government co-operate with the international community and comply with recognised standards in the fight against corruption?

Is this co-operation deliberate or made upon request for legal and institutional assistance?

Has the government endorsed specific treaties and/or key anti-corruption conventions to reciprocally prompt and effective legal assistance?

Does the government keep requesting authorities informed of the implantation of any demand for judicial assistance, such as searches, transmission of documents or depositions of witnesses, provide for extradition of its nationals or submit the cases to the authorities charged with prosecution?

1.2 CRIMINALISATION OF CORRUPTION					
1.2.5 International Co-operation: Assistance and Extradition	Level 1	Level 2	Level 3	Level 4	Level 5
	Legal Mutual Co-operation:	The government does not co-operate with other states in the fight against corruption.	The government co-operates with other states, spontaneously or upon request <i>i.e.</i> provides mutual legal and assistance and can seek evidence from abroad (through bilateral treaties, multilateral treaties or as a party to an international anti-corruption convention).	The government provides for extradition or, if it refuses extradition of its nationals, submits the case to the competent domestic authorities for prosecution.	The government does not invoke dual criminality when another state asks for international assistance.

Enforcing Domestic Anti-corruption Provisions

Government strategies and provisions in criminal, administrative, and civil law can successfully fight corruption only if they are effectively enforced. A country's enforcement efforts may be measured by the statistics it collects and how regularly it analyses data related to the investigation and prosecution of corruption offences. Detection and investigation rely heavily on access to information, which including witnesses' accounts of wrongdoing.

Control and Detection

The civil service needs to erect barriers against corruption. Internal audits and investigation units in the civil service, which includes law enforcement agencies, can play an important role in uncovering acts of corruption by public servants. Such units usually have the power to enforce administrative laws and apply disciplinary sanctions.

To enhance detection of bribery and corruption in key government activities, “red flag” indicators should be developed. They identify the most common deviations from fair, transparent practices as they are sources of corruption.

Questions

Has the civil service put in place investigation units, with internal control and administrative law enforcement powers, to prevent, uncover, and report corruption cases?

Are there disciplinary sanctions for civil servants involved in corruption or bribery practices?

Have detection tools and procedures been introduced in public bodies prone to corruption risks?

Do co-ordination mechanisms between investigation units and law enforcement agencies exist and do they operate?

1.3 ENFORCING DOMESTIC ANTI-CORRUPTION PROVISIONS					
	Level 1	Level 2	Level 3	Level 4	Level 5
1.3.1 Control and Detection	No internal control mechanisms have been introduced in the civil service.	Internal control mechanisms have been introduced into the civil service and public bodies, including law enforcement agencies, have internal control units which can enforce administrative laws and apply disciplinary sanctions.	In addition to the above, particular risk assessment and detection tools and procedures have been introduced in public agencies particularly prone to corruption risks (customs, tax, government procurement and judicial).	Internal investigations have been initiated on the grounds of suspicion of corruption.	Administrative investigation units transfer suspicions of corruption to law enforcement agencies. The latter determine whether there are sufficient grounds for carrying out further criminal investigations and, possibly, prosecutions.

Reporting

Reporting suspicion of misconduct by public officials can be either required by law and/or facilitated by organisational rules. Whistle-blowing (*i.e.* the act of raising concern about the misconduct of an official within an organisation) is a key element of good governance, transparency, and accountability. Reporting by competitors, employees, or other citizens, including the media, is also a helpful source of information and should be facilitated. A range of institutions (e.g. an ombudsman, inspector general) and procedures and services (complaint mechanism, help desks, hotlines) could enable the exposure of wrongdoing. Procedures could have built-in controls in order to guard against malicious and false reporting by competitors.

The effectiveness of reporting often depends on people feeling safe in the knowledge that if they make *bona fide* reports about wrongdoing they will receive proper protection from retaliation.

Questions

Do provisions or guidelines relative to the reporting of wrongdoing exist? Do they clearly set out the procedures which public servants should follow, particularly for reporting corrupt practices?

Has the government established whistle-blowing mechanisms that allow citizens to report suspicions of bribery and corruption? Are provisions and mechanisms in place to protect those who report bribery and corruption crimes?

1.3 ENFORCING DOMESTIC ANTI-CORRUPTION PROVISIONS					
	Level 1	Level 2	Level 3	Level 4	Level 5
1.3.2 Reporting	There are no provisions or guidelines for reporting wrongdoing.	Guidelines or instructions clarify the steps public officials should follow, particularly for reporting, when they suspect corruption.	Whistle-blowing mechanisms have been established for government officials to report suspicious acts in relation to corruption allegations.	Whistle-blowing mechanisms have been put in place to allow all people to report suspicions of bribery and corruption.	Witness protection provisions ensure adequate safeguards for those who report bribery and corruption crimes.

Collecting Statistics on Corruption Offences

The collection and dissemination of statistics on corruption offences is important for many reasons. Statistics allow a country to demonstrate its commitment and to substantiate its practical efforts to fight bribery and corruption. Statistics also enable effective evaluation of the implementation and enforcement of domestic anti-corruption provisions. Information about the number of cases that progress beyond initial investigation to the stage of formal charges provides especially valuable information about enforcement.

Questions

Do governments collect data on suspicion of corruption or investigations of corruption offences?

Does the collected data make it possible to estimate what percentage of all criminal offences corruption offences account for?

Do the business sector and the civil service draw up statistics on corruption crimes?

Do the authorities keep statistical track of criminal, administrative and civil proceedings, including enforcement rulings and sanctions?

1.3 ENFORCING DOMESTIC ANTI-CORRUPTION PROVISIONS					
	Level 1	Level 2	Level 3	Level 4	Level 5
1.3.3 Collecting Statistics on Corruption Offences	The authorities collect no data on reported suspicion of corruption or on investigations of corruption offences.	The authorities collect general data on corruption crimes, <i>i.e.</i> it is possible to estimate corruption offences as a percentage of all criminal offences.	The authorities collect data on economic and corruption crimes <i>i.e.</i> it is possible to determine the kind of corruption crimes committed.	The authorities collect data and establish statistics on the various economic and corruption crimes committed in the business sector and the civil service.	The authorities collect data on criminal, administrative and civil proceedings, including enforcement decisions and sanctions.

Implementing and Enforcing Sanctions

The ultimate deterrent to bribery is a clear regulatory framework that is effectively enforced with equal attention given to the application of both administrative and criminal sanctions. If laws and rules are not enforced, or only partially enforced, and paperwork is widely forged then the probability of being detected and sanctioned is low, meaning that it is more likely that offenders will remain unpunished.

Various examples illustrate the detrimental effects of exemptions from, or the non-application of, sanctions. These may concern both criminal as well as administrative law provisions. For instance, persons involved in procurement contracts classified as “national security” may consider that they run only a slight risk of being detected and sanctioned, and are thus more likely to engage in bribery and kickbacks. There are also examples of a number of countries which, despite having detailed anti-bribery rules, never prosecuted a bribery case and do not act on the evidence of bribery.

To assess whether anti-corruption provisions are enforced it would be important not only to obtain information about the existence of law enforcement statistics, but equally important to analyse the corruption offences prosecuted, the sanctions imposed, and the effectiveness of their application. This calls for a descriptive and qualitative assessment, which cannot be captured in an indicator.

Questions

Have governments established a clear regulatory framework to effectively combat bribery and enforce administrative and criminal sanctions?

Are laws and rules properly enforced, and sanctions applied?

In order to guarantee the enforcement of anti-corruption provisions, are statistics available and the prosecution of corruption offences analysed?

People and Public Institutions Involved in the Fight against Corruption

Resources need to be allocated to the fight against corruption. This means institutions need to be designated and within those institutions competent personnel tasked with ensuring the effective, consistent application and enforcement of laws and regulations on anti-corruption. Furthermore, adequate financial means as well as training and technical means need to be provided to the institutions tasked with the fight against corruption.

Independent and Accountable Judiciary

Political will and social attitudes to corruption have an impact on how effectively anti-corruption laws are enforced. It is key to deciding to what extent the law enforcement system can ensure its role. An effective anti-corruption apparatus builds on a judiciary able to act independently and free from any political influence and corruption. Also, a conflict serious enough to come to formal decision-making in a court, should be handled by an authority that is “competent, independent and impartial”.

Constitutional provisions and formal assurance that the judicial branch of government is separate and independent of other government branches are the way in which most states guarantee the independence of the judiciary. But it is not the only way.

A key aspect of judicial independence is that judges must be independent from each other. A member of a court or tribunal will not be independent if he or she can be directed by a superior colleague on how to decide a matter. Nor will the judge enjoy independence (of mind) if he or she can be easily removed from his or her judicial function.

Another issue of judicial independence which needs constant vigilance relates to training, salary, pensions, and other benefits of office. Lack of trained personnel and inadequate payments represent a source of vulnerability and ineffectiveness and increase the risk that the judiciary itself could be subject to corruption.

It is of course important to ensure that persons occupying judicial positions are accountable. There are two types of accountability. First, judges are individually accountable, including to the parties, by reason of their decisions. Second, the court of law, as an institution, is accountable to the public. Accountability is the direct result of being the subject of scrutiny. Public scrutiny is only one type of scrutiny. Judicial accountability holds judges accountable for their decisions, predominantly by way of appeal.

Questions

Is the judiciary independent and able to act effectively to fight corruption?

Do the judicial authorities have the capacity to carry out their functions and do they have budgets that are large enough to prevent them from being vulnerable to undue influence or political pressure?

Are judges independent from each other, sufficiently well trained to discharge their duties properly, and correctly remunerated?

Which courts deal with corruption crimes? Are there specialised courts that deal with the corruption of civil servants?

Is there a legal technique in place through which judges may be challenged on suspicion that they lack integrity, independence, or neutrality?

1.4 PEOPLE AND PUBLIC INSTITUTIONS INVOLVED IN THE FIGHT AGAINST CORRUPTION					
1.4.1 Independent of the Judiciary	Level 1	Level 2	Level 3	Level 4	Level 5
		Judicial independence is not guaranteed by the constitution or the law.	Judicial authorities have the necessary formal independence to carry out their functions. They are however not independent financially. They are also (sometimes) submitted to <i>de facto</i> undue influence.	Judicial authorities have the necessary constitutional and financial independence to carry out their functions. They are free from political pressure.	The judiciary is independent and judges are independent from each other. They are adequately trained and remunerated (<i>i.e.</i> salaries on which they and their families can decently live and which do not compel to hold a second job.).

Accountable and Responsible Institutions

To seriously and effectively implement the anti-corruption legal framework, institutions need to be designated and assigned clearly defined responsibilities in the fight against corruption. Some countries use multi-purpose agencies that combine preventive anti-corruption functions and law enforcement powers. Others establish bodies dedicated to prevention and, in addition, designate specialised autonomous anti-corruption law enforcement bodies.

To ensure effectiveness in the fight against corruption, designated institutions need to have adequate resources. This involves both appointing a sufficient number of responsible officials to implement and enforce the anti-corruption measures and allocating sufficient funding. Indeed, it is essential that government anti-corruption agencies enjoy adequate working conditions and resources and that their staff is educated and regularly trained, particularly in the detrimental effects of corruption and the best ways to fight malpractice.

Questions

Have institutions been designated with clear mandates to implement the existing anti-corruption framework effectively?

Are the responsibilities of the different institutions sufficiently clearly defined?

Are these institutions autonomous?

Do they have adequate resources (funding, technology etc)?

Is staff – particularly in law enforcement agencies – familiar with anti-corruption issues and the requisite investigation and detection methods?

Are training sessions regularly organised for government practitioners of prevention, detection, and punishment of bribery?

1.4 PEOPLE AND PUBLIC INSTITUTIONS INVOLVED IN THE FIGHT AGAINST CORRUPTION					
	Level 1	Level 2	Level 3	Level 4	Level 5
1.4.2 Accountable, Responsible Institutions to fight corruption	No institution has been specially tasked with fighting corruption and no specific resources have been allocated to the fight against corruption.	The government has designated some ministries (or institutions) to fight corruption.	Specific persons have been appointed to fight corruption within designated public agencies.	Funding and necessary resources (in particular access to technology) have been allocated for this particular purpose to the public agencies involved in the fight against corruption.	In addition to 2,3, and 4, public officials involved in fighting corruption obtain specialised training, including on financial and economic practices to identify, detect, investigate and sanction complex corruption cases.

Inter-agency Co-ordination and Co-operation

When different government agencies are involved in the fight against corruption and related crimes, there should be procedures in place to ensure information sharing and co-operation.

Inter-agency communication has proved vital to the detection of bribery in public administrations, with a number of countries having established centralised co-ordination agencies to facilitate and heighten the effectiveness of information sharing. Exchange of information and co-operation is also particularly important among law enforcement agencies in the case of corruption detection, investigation and prosecution. But exchanges on concrete prevention or detection tools and on analytical work may also be essential to enhance the understanding of all those involved in the fight against corruption. It is particularly important that financial control and law-enforcement bodies share information.

Questions

Do mechanisms for co-operation between anti-corruption agencies exist? Are these mechanisms sufficiently clearly defined to ensure optimal inter-agency collaboration?

Do formal procedures for sharing information exist? Are they effectively followed up?

Are alleged cases of corruption effectively referred to the law enforcement authorities? Do procedures provide for transmitting information – including that passed on by the Financial Intelligence Unit (FIU) – to law enforcement authorities on suspicions of money laundering related to bribery of public officials?

1.4 PEOPLE AND PUBLIC INSTITUTIONS INVOLVED IN THE FIGHT AGAINST CORRUPTION					
	Level 1	Level 2	Level 3	Level 4	Level 5
1.4.3 Inter-agency Co-ordination and Co-operation	No lines of co-operation and co-operation between public agencies have been defined and there is no inter-agency co-operation.	Although no formal lines of co-operation and co-ordination have been set, various bodies involved in fighting corruption co-operate on a spontaneous, case-by-case basis.	Procedures to share information and to co-operate exist and are effectively followed up. This applies in particular where more than one body is involved in the fight against corruption.	Referral mechanisms ensure that suspicion of corruption is transmitted to the law enforcement authorities (the autonomous anti-corruption law enforcement body when such body exists).	In addition to the above, financial and non-financial institutions are required to report to the financial intelligence unit (FIU) suspicions of money laundering connected to bribery of public officials. The FIU transfers the information to the law enforcement authorities.

Tax Administration

In this area of public service the incentives to engage in corrupt behaviour are considered high: officials may be tempted to enrich themselves and tax customers may seek to evade taxes by paying bribes.

A variety of factors contribute to corruption in tax administration. These include notably the complexity of tax laws and procedures, the monopoly power and degree of discretion of tax officials, or the lack of adequate monitoring and supervision.

An important policy prescription for curbing corruption in tax administration is to establish a rational tax system with simplified tax laws. The number of tax rates should be as low as possible and the number of tax exemptions as small as possible (if they cannot be eliminated altogether).

To further help reduce tax officials' discretion and make them accountable, professional standards of tax administration should be high, *i.e.* professional management should be appointed; staff should be recruited and promoted on merit; salaries should be sufficient; and regular training, adapted to the needs of the staff members, should be provided. In addition, responsibilities should be clearly defined and functions duly separated. Staff rotation schemes should be put in place to prevent clientelism.

Services should be subject to regular internal and external controls. In order to make controls effective, performance standards (relating to revenue targets and service standards) as well as codes of conduct, providing for principles such as conflict of interest, confidentiality of information, etc., should be in place. Punitive action can have an important deterrent effect and codes should be backed up by effective sanctions, which should include internal disciplinary measures for minor offences and the involvement of law enforcement agencies for more serious cases of fraud and corruption. The establishment of special vigilance units can support internal controls (see 1.3.1. "Control and Detection" and the section on control and detection in this annex).

Questions

Have the corruption risks in tax administration been assessed and have measures been designed to promote integrity and prevent, deter, or sanction corruption?

Have measures been adopted to curb the monopoly power of tax officials?

Are standardised procedures in place which limit one-on-one contacts between officials and taxpayers and reduce the number of forms/approvals needed?

Is the tax system simple and are the rules clear with few exceptions and clear definitions?

Have factors that can increase professional standards been specifically designed for this administration, e.g. ethical standards, codes of conduct, appointment and remuneration of staff as well as professional management? Are these integrity elements regularly communicated to all staff members and are they effectively implemented?

Is the administration monitored and are controls carried out on a regular basis?

Is wrongdoing sanctioned?

1.4 PEOPLE AND PUBLIC INSTITUTIONS INVOLVED IN THE FIGHT AGAINST CORRUPTION					
1.4.4 Tax Administration	Level 1	Level 2	Level 3	Level 4	Level 5
		No special consideration has been given to integrity in tax administration.	The government has devoted some attention to corruption in tax administration. Surveys have been carried out to diagnose potential problems and suggest reform measures.	In addition to 2, tax laws have been rationalised, the tax system has been simplified, and measures to promote integrity (ethics, codes of conduct, human resource management) have been introduced in tax administration.	In addition to 3, a full set of integrity measures has been introduced (ethical standards, codes of conduct and human resource management measures). These measures are effectively and regularly communicated to public officials, while training ensures an adequate understanding by public officials.

Customs Administration

Customs administration is among the government departments where corruption is most entrenched. Customs administration plays a crucial role in the material well-being of populations and the proper functioning of the economy. Import duties may account for a high, sometimes very high, proportion of national revenue, while exports are a key source of foreign currency revenue. Customs officers are uniquely placed to derive personal benefit from both flows and it is important for countries to develop a strategy to prevent all forms of corruption and ensure the efficiency and effectiveness of customs administration.

It is generally admitted that customs administration should enjoy sufficient autonomy and be protected from the interference of politicians, whose influence should be limited to determining customs administration mandates. Import tariffs and the number of tariff rates should be limited and administrative regulation of trade should be reduced to a minimum; exemptions to the standard rules should be as few as possible

Additionally, fighting bribery and corruption requires customs operations to be effectively organised. This means that procedures and quality standard are defined; that discretion of customs officials is kept to a minimum; and that information and paperwork requirements from business are manageable. Cash payments of duties should be avoided and replaced by bank transfers, deposits, and guarantees.

To strengthen customs services' integrity, countries should introduce clear staff rules, which may be further bolstered with ethics rules and guidelines. Once they have been drawn up, they should be widely disseminated.

In addition, human resource management measures should be introduced to enhance integrity and fight corruption. These measures may include objective, knowledge-based recruitment and promotion; regular staff rotation; career-long training (which should ethics and integrity issues), and sufficient remuneration to ensure a decent standard of living.

Finally, customs services should be subject to regular controls and non-compliance should be sanctioned. This may include internal disciplinary measures for minor offences and the involvement of law enforcement agencies for more serious cases of corruption. The establishment of special vigilance units can support internal controls (see 1.3.1. "Control and Detection" and the section on control and detection in this annex).

1.4 PEOPLE AND PUBLIC INSTITUTIONS INVOLVED IN THE FIGHT AGAINST CORRUPTION

	Level 1	Level 2	Level 3	Level 4	Level 5
1.4.5 Customs Administration	No special consideration has been given to integrity in the customs administration.	The government has devoted some attention to corruption in customs. Surveys have been carried out to diagnose potential problems and consider reform measures.	In addition to 2, some measures have been introduced in customs administration (e.g. avoidance of red tape, the limited discretion of officials in the discharge of their duties, the use of bank transfers instead of cash for payments of duties, the introduction of ethical standards, codes of conduct and guidelines on integrity, and human resource management measures).	In addition to 3, a full set of measure has been adopted to improve the organisation of customs operations and integrity measures have been defined and introduced (ethical standards, codes of conduct, and human resource management measures). These measures are effectively and regularly communicated to public officials. Training ensures an adequate understanding by public officials.	In addition to the above, organisational and implementation measures are regularly monitored and reviewed. Suspicions of violations of anti-corruption provisions can be reported and wrongdoings sanctioned.

Public Procurement

Certain government departments and activities, including public procurement, are particularly susceptible to corruption. Addressing corruption risks in public procurement is an important component of any effective anti-corruption strategy as public purchases involve a large proportion of a country's public funds (the ratio of government procurement to GDP is estimated to be over 15% in OECD countries and sometimes more in non-OECD countries). Consequently, UNCAC as well as other international anti-corruption instruments pay particular attention to public procurement.

a. Frameworks and Processes

To fight corruption in public procurement effectively, it is essential to consider the entire procurement system. Establishing an adequate, clear, straightforward regulatory framework for public purchases is a first step. The regulatory framework needs to cover the entire procurement cycle – from conception and definition of needs to the final phase of contract payment. Standards, developed internationally – particularly the UNCITRAL Model Law on Procurement of Goods, Construction and Services – may be the basis.

Standardisation, enhanced transparency (including access to information) and predictable government procurement processes reduce room for discretion and malicious practices. Overregulated systems may generate corruption as rules are frequently overlooked, broken, or applied misleadingly.

Regulatory provisions, to be effective, need to be understood and applied at all levels of public administration. They should also be applied to most, if not all, procuring entities and the majority of goods and services purchased by any government entity. Too often, large proportions of public purchases are unregulated as they are exempted from the regular procurement framework and no substitute regulations exist for those procurement areas.

Questions

Do rules and provisions regulating public procurement processes exist?

Does the regulatory framework cover the whole public procurement cycle?

Are regulations in conformity with internationally recognised standards (UNCITRAL Model)?

Have public procurement processes been standardised to enhance transparency and avoid deviations from set procedures?

Have transparent public procurement procedures been implemented by most or all public entities and do they apply to almost all procurement contracts?

Are exemptions to the overall procurement rules and standards restricted, i.e. do they apply to a limited number of public purchases of goods and services, and are they subject to substitute regulations?

1.4 PEOPLE AND PUBLIC INSTITUTIONS INVOLVED IN THE FIGHT AGAINST CORRUPTION					
	Level 1	Level 2	Level 3	Level 4	Level 5
1.4.6 Public Procurement Framework and process	No particular rules or provisions regulate public procurement.	Legislation has been established to seek to ensure efficient delivery and “value for money”.	Procurement processes have been standardised to enhance transparency, reduce room for discretion and malicious alteration of procedures.	Transparent public procurement procedures are implemented by most/all public entities and apply to most procurement contracts.	Exemptions from the general procurement rules and standards are limited; they apply only to a limited number of public purchases of goods and services and are subject to substitute regulations.

b. Reducing Corruption Risks

Public procurement contracting can play a significant role in deterring, detecting and sanctioning corruption. Public procurement agencies can deter corruption by taking preventive integrity and transparency measures.

Procurement agencies can also seek to ensure that they do not contract with companies and individuals that have a record of corruption and which may seek to bribe public officials. Some countries regulate the intermediation and agency activities of companies involved in government procurement. Regulations may prohibit the exercise of intermediation, but some countries have established obligations for companies to register the intermediaries they involve and to disclose the commissions paid to them (see discussions of third parties indicator in 1.2. “Criminalisation of Corruption”).

Also, because public procurement contracts are often very lucrative, disqualification, suspension, or disbarment from public procurement contracting could hit contractors hard. However, this kind of sanction needs to be carefully regulated. Competencies and procedures need to be clearly set out to exclude any additional corruption risks.

Questions

Have public procurement departments drawn up and implemented measures designed to promote integrity and prevent, deter or sanction corruption in public procurement? Do they exercise due diligence in assessing risks that may be linked to contracting with companies or individuals with records of involvement in corruption or related misdeeds?

Do particular provisions regulate the intervention and exercise of intermediaries or agencies for companies involved in contracting with governments?

Do procurement agencies debar companies from public contracts when they have previous records of involvement in corrupt practices?

1.4 PEOPLE AND PUBLIC INSTITUTIONS INVOLVED IN THE FIGHT AGAINST CORRUPTION					
1.4.6 Public Procurement – Reducing Corruption Risks	Level 1	Level 2	Level 3	Level 4	Level 5
		Public procurement administrations developed no particular measures to promote integrity and prevent, deter or sanction corruption in public procurement.	Public procurement administrations have developed measures to promote and enhance integrity.	In addition to 2, procurement agencies perform due diligence measures to assess possible risks associated with applicants for procurement contracts.	Specific provisions regulate the intervention and exercise of intermediaries or agencies for companies involved in contracting with the government.

Awareness Raising and Public Education

Targeted and practical awareness-raising campaigns are a key component in an anti-corruption strategy. Awareness-raising should regularly address public officials as well as business representatives and the public at large. Public awareness and public education can focus on the damage and losses that corruption brings to ordinary people, as well as on practical and effective ways to address this problem and the gains from resistance to corruption. Awareness-raising campaigns and public education programmes can employ a variety of mechanisms such as printed advertising, information campaigns delivered through the mass media, training events for targeted groups and educational programmes (including in schools and universities). The goal is to change public attitudes: there is no reason for accepting corruption as a normal way of doing business and as an inevitable evil.

Questions

Has the government engaged in awareness raising campaigns to sensitise public officials and the public at large to the dangers corruption represents and its detrimental effects on society and governments?

Does the government provide accessible materials to public officials, businesses, and civil society on the negative impact of corruption as well as on action to protect the rights and interests of citizens?

Does the government allocate specific funds to support such awareness and education efforts in high risk groups? Have programmes on integrity and anti-corruption been developed on a larger scale?

1.4 PEOPLE AND PUBLIC INSTITUTIONS INVOLVED IN THE FIGHT AGAINST CORRUPTION					
	Level 1	Level 2	Level 3	Level 4	Level 5
1.4.7 Awareness Raising and Public Education	The government has engaged in little or no awareness raising to explain that corruption is to be fought.	The government has engaged in general campaigns about the detrimental effects of corruption.	The government has produced easily accessible materials for public officials, business and civil society on the negative impact of corruption and on actions to protect the rights and interests of individual citizens without resorting to bribery	The government allocates specific funding in support of awareness raising and education for high risk groups (public and business sectors).	The government developed and/or supports education programmes on integrity and anti-corruption at large (including at school and university level).

The Media as a Means to Expose Malpractice

Print and electronic media can be powerful allies in the fight against corruption. In many countries, the press has contributed to a better understanding of the dangers and costs of corruption, put pressure on ruling elites to mend their ways and supported anti-corruption activities – whether legislative or civil society initiatives.

Investigative journalism may help uncover corruption. It requires an investment in time, resources for research, and the development of reporting skills.

Obviously, a free press and investigative reporting are only possible where journalists enjoy protection. Constitutional and legal provisions are necessary and the rights of journalists must be upheld by an independent judiciary and protected by the rule of law. Furthermore, journalists should not be compelled to reveal their sources.

Questions

Does a free press exist and is it vigorous enough to improve understanding of corruption and fight it?

Are an investigative journalists able to report on corrupt practices at government level?

Are journalists able to work free of pressure or without being compelled to reveal their sources?

1.4 PEOPLE AND PUBLIC INSTITUTIONS INVOLVED IN THE FIGHT AGAINST CORRUPTION					
1.4.8 The Media as a Means to Expose Malpractice	Level 1	Level 2	Level 3	Level 4	Level 5
		There are no provisions ensuring a free press.	A media sector is in place based on elementary legal provisions.	Journalists can work without any sort of pressure.	The media sector is well developed and some journalists investigate malpractice, including corruption allegations.

Private Sector Actions to Stem Corruption

Government action alone is generally not enough to prevent and combat corruption. Complementary and mutually supportive actions by the business community, trade unions, and civil society actors are recognised as important. There is a lot that business can do to fight corruption.

Private Codes of Conduct (which specifically include anti corruption provisions)

Companies, business associations, and industry federations can make valuable contributions to the fight against corruption. The business sector may come up with ways to effectively fight corruption both through individual company and collective business sector actions. Collective action may be sector-specific or span industries. It may be local, regional and/or global. It is a way to share experience, learn from peers and, in partnership with other stakeholders, contribute to levelling the playing field.

On a worldwide level, an increasing number of large corporations have adopted corporate codes of conduct with a clear reference to the fight against corruption. Rules of conduct and principles for countering bribery included in codes of conduct (including anti-corruption recommendations) are important. They may be considered reflections of companies’ “ethical philosophies”.

Questions

Are domestic businesses familiar with corporate codes of conduct?

Do companies operate national and/or international seminars to familiarise management with corporate compliance standards?

Are these standards enshrined in codes of conduct to which all staff is committed?

Do companies who are committed to compliance programmes and standards communicate them to the public?

Are personnel, agents and suppliers effectively informed and trained to respect business integrity standards? I

Does the government encourage the implementation of codes of ethics which include anti-corruption provisions?

1.5 PRIVATE SECTOR ACTIONS TO STEM CORRUPTION					
	Level 1	Level 2	Level 3	Level 4	Level 5
1.5.1 Private Codes of conduct (which specifically include anti corruption provisions)	Businesses are not familiar with business integrity principles; no communication pertaining thereto has taken place at domestic level.	Businesses have been familiarised with business integrity through national and/or international seminars which addressed key company representatives.	Some businesses have started to define corporate integrity policies. They have developed codes of conduct in which they also set integrity standards for their staff.	A large fraction of businesses have adopted corporate codes which contain clear integrity standards applicable in all business circumstances and to all staff, suppliers, subcontractors, consultants and intermediaries.	In addition to 2,3, and 4, businesses have adhered to sectoral and multi-industry integrity initiatives.

1.5.2 Compliance programs (which specifically include anti corruption provisions)

It has been evidenced that businesses have to engage in adequately conceived and implemented compliance programmes to ensure corporate codes' effectiveness. The policies and procedures developed in the framework of compliance programmes represent the response to the day-to-day risks the company may confront while operating its business. Compliance policies and procedures should thus help reduce fraudulent activity by identifying and develop adequate responses to potential risk areas.

Each company has to determine for itself the measures that are most conducive to a compliance culture. However, some standards are common to all programmes. One crucial element for a code's effective implementation is that all persons concerned know the code and its provisions. Codes are of real benefit only when meaningfully communicated and accepted throughout the company. Company codes should be distributed to all employees, including overseas divisions, and externally to contractors and other stakeholders. Organisation-wide training on compliance standards and procedures – including specific training on identified risk areas – is also critical.

Furthermore, implementation of a code and its related principles may involve the formulation and designation of a corporate governance arrangement charged with ensuring compliance. Reports on alleged violations or non-compliance with the law or the company's policy will frequently have to be made to the compliance structure, which must have clear instructions on how to act upon such allegations (reporting is outside the scope of this typology and will thus not be further developed in this framework).

A clear sanctions policy must be defined in case of non-compliance with the code.

Questions

Have companies adopted compliance programmes to ensure that the principles and standards set out in the codes of conduct are effectively enforced?

Do companies' compliance programmes seek to apply to all company staff, in particular to management?

Do corporate codes of conduct and compliance programmes also apply to contractors, suppliers, consultants and intermediaries?

Have companies developed training for all staff and business partners to help businesses ensure adequate compliance? And have companies undertaken efforts to raise awareness, ensure compliance, and enforce disciplinary action in case of contravention?

Have companies taken the necessary steps to define an adequate governance structure to ensure implementation and monitor enforcement of the company's compliance policy?

1.5 PRIVATE SECTOR ACTIONS TO STEM CORRUPTION					
1.5.2 Compliance programs (which specifically include anti corruption provisions)	Level 1	Level 2	Level 3	Level 4	Level 5
		Businesses have adopted no compliance policies to complement their codes of conduct.	Businesses have dispatched their corporate codes of conduct to all their staff, including overseas divisions.	In addition to 2, corporate codes of conduct have been communicated externally to contractors and other stakeholders, including intermediaries. Companies also organise company-wide training on compliance. Contractors and suppliers are involved in some training courses.	In addition to 3, companies have put in place arrangements for implementing compliance policies and procedures. The compliance structure is also in charge of collecting and acting upon allegations of corruption.

1.5.3 Non-financial Reporting

Active disclosure efforts are an important driver of good governance. Disclosure efforts by companies complement those of government and can make a difference in the fight against corruption as they have a strong public impact. Government and stock exchange regulations are driving factors.

Government initiatives to establish a framework to regulate and guide companies in their financial and non-financial reporting are addressed in the Dimension II-2, “Corporate Governance”. However, to fight corruption, governments may also encourage companies to include non-financial elements in the reporting of their business activities. In particular, companies engaged in integrity programmes may publicly disclose some or all aspects of their policies to stem corruption.

Questions

Does the government encourage businesses to disclose non-financial information on actions to fight corruption or does it prohibit them from doing so?

Do businesses disclose information on their policies and practices for fighting corruption?

Have businesses adopted a business integrity policy and do they inform their shareholders of its existence? If so, do they disseminate key elements of the policy, e.g. management systems, whistle-blowing procedures, staff training?

Do businesses make data on the implementation and enforcement of their integrity measures available?

1.5 PRIVATE SECTOR ACTIONS TO STEM CORRUPTION					
	Level 1	Level 2	Level 3	Level 4	Level 5
1.5.3 Non-financial Reporting	Governments prohibit or do not encourage businesses to disclose non-financial information on actions to fight corruption.	Governments encourage the disclosure of non-financial anti-corruption information but businesses do not disclose information on any policies and practices to fight corruption.	Governments encourage the disclosure of non-financial anti-corruption information. Businesses have introduced codes of conduct and compliance programmes and inform their shareholders of the fact.	Governments encourage the disclosure of non-financial anti-corruption information and businesses, having adopted codes of conduct and compliance programmes, disclose their policies. Businesses also communicate such key components of their policies as the management system, whistle-blowing procedures, staff training etc.	In addition to 3 and 4, businesses make data on the implementation and enforcement of their integrity measures available (including through certified external audits).

The Fight against Corruption Goes Global

Globalisation and competitive challenges have led to new rules and regulations in international business transactions. A number of legally binding and non-binding instruments have been developed at the regional and international levels to improve trade and investment and promote integrity.

The international legal framework in which companies operate, which has been strengthened fast in recent years, now includes the following inter-governmental instruments:

- the Inter-American Convention Against Corruption (1996);
- the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1997);
- European Union Instruments on Corruption (1997);
- Council of Europe Criminal and Civil Law Conventions on Corruption (1997-1999);
- The African Union Convention on Preventing and Combating Corruption (2003);
- United Nations Convention Against Corruption (2003).

National government instruments also increasingly also have global implications for company operations (*e.g.* the Foreign Corrupt Practices Act and the Sarbanes-Oxley Act in the United States).

The various instruments, including inter-governmental instruments, differ in scope and function. Besides addressing different geographical regions, they focus on different practices. Some, but not all, may affect both domestic and international corruption, while some address only public corruption and others also aim to outlaw corruption practices in the private sector.