Institutional arrangements for corruption prevention:

Considerations for the implementation of the United Nations Convention against Corruption Article 6

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Acknowledgements

Abstract

What kind of institutions does a state need to have in place to effectively prevent corruption? What does it mean, when article 6 of the UN Convention against Corruption (UNCAC) requires states to ensure the existence of a body or bodies to prevent corruption? It has been argued that this calls for specialised preventive anti-corruption agencies, preferably one. While this might be one of several options, this U4 Issue Paper argues differently. As the UNCAC requires such bodies to be in place not only for coordinating and supervising preventive anti-corruption policies, but also for their implementation, it is unavoidable that this implies the involvement of a variety of institutions. By unravelling the functions prescribed in article 6 from a public policy perspective, this paper also sets into perspective what is meant by granting the body or bodies the "necessary independence" to enable them to carry out its or their functions effectively and without undue influence. Obviously, this "necessary independence" will look differently depending on whether one has to coordinate, supervise, or implement an anti-corruption policy, not to mention increasing and disseminating knowledge on corruption prevention, as also stipulated in article 6.

Executive summary

Because of the multifaceted nature of corruption, the way in which a state opts to respond to corruption and corruption risks will necessarily involve a variety of state and non-state institutions. States may respond through existing institutions, create new ones, or choose a combination of both. States also need to clarify the mandates and functions of the respective institutions and determine how these will interact with one another: in other words, a state needs to define its *institutional arrangements*[1] for anti-corruption efforts.

This U4 Issue Paper analyses the content and intention of article 6 of the United Nations Convention against Corruption (UNCAC) – one of the central articles of the Convention – that requires States Parties to ensure the **existence** of a body or bodies to **prevent corruption**. It is a mandatory article that is intimately linked with, and complements, the prior article (art. 5) on policies and practices to prevent corruption. Therefore, this paper explores the implications for public policy making that arise from the implementation of article 6.

Besides focusing specifically on preventive anti-corruption bodies, article 6 notes **several functions** that these are to fulfil: namely, **implementing**, **coordinating** and **supervising of anti-corruption policies**, as well as **increasing** and **disseminating knowledge about corruption prevention**. In addition, States Parties are required to grant the body or bodies not only the **necessary independence** to perform its or their functions, but also the **resources** needed to do so. These obligations hold a number of implications for public policy making. By disaggregating article 6 into its specific components and linking these to policy processes, this U4 Issue Paper aims to offer some key considerations for policy makers, heads of public institutions, and donors who support countries in implementing the UNCAC.

First, article 6 refers to a variety of **key functions** that a preventive body or bodies should perform. With regard to the first – **implementing of anti-corruption policies** – it is essential to understand that preventive anti-corruption policies refer to the wide range of preventive measures noted in Chapter II. These are typically not named "anti-corruption policies"[2] but refer rather to a specific sector or regulatory regime: public procurement, probity, transparency, or access to information policy, etc. Realistically, a single public institution can not implement these policies effectively. Rather, they require the interaction of several agencies. Putting these anti-corruption policies into practice is often challenging because they affect many institutions at the same time and because they have many opponents. In addition, the effective implementation of anti-corruption policies requires **structured and systematic communication, training and monitoring processes** with clearly defined roles and responsibilities. Considering all this, States Parties need to assign a variety of different institutions, most of which often already exist, with implementing such policies if they are to be effective.

The second function described in article 6 relates to the **oversight of anti-corruption policies.** Oversight helps strengthen the effectiveness of implementation by providing feedback on the intended outcomes and outputs, as well as by identifying difficulties and remedial actions. Yet oversight is perhaps the weakest aspect of existing anti-corruption efforts around the world. Given that multiple institutions are involved in the implementation of anti-corruption policies at different levels of the state administration, it is important to review the notion of oversight in order to reflect the implied complexities. We suggest distinguishing between different types of oversight, as follows:

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[1] For the purpose of this paper, the term *institutional arrangements* for anti-corruption efforts refers to the existence and interaction of different public institutions in a given country that have a mandate and/or a role to play in preventing and combating corruption.

[2] Despite the fact that specific "anti-corruption policies" not usually are named this way, we will continue to use this term throughout the paper as a collective term that refers to the wide variety of corruption prevention policies (including policies on procurement, probity, access to information, or transparency).

- **Intra-institutional oversight** mechanisms should exist within all agencies that participate in implementing a specific anti-corruption policy in order to monitor performance in relation to their respective responsibilities and concrete objectives. Such oversight should be part of regular performance monitoring.

- **Oversight at a cross-institutional level** is useful to monitor the overall impact of a specific anti-corruption policy by monitoring the performance of all involved institutions. Given that states have more than one policy contributing to anti-corruption, different institutions may be responsible for the oversight of them (e.g. a procurement policy unit for the procurement policy, a national transparency council for access to information, etc.).

- **National level oversight** can be used in case that States Parties have a comprehensive national anti-corruption strategy. This task – different to the previous ones – can be assigned to a central national institution. Such an approach may also be useful in keeping track of a country's overall performance in corruption prevention, identifying bottlenecks, defining priorities, and potentially reporting about compliance with the UNCAC and other international obligations.

Obviously, in many countries, achieving this necessary but complex oversight may require a gradual approach in line with institutional capacities.

A third function conferred to the body or bodies described in article 6 is the coordination for anti-corruption policy implementation. This is important due to the fact that a multitude of public institutions are engaged in implementation. From a public policy perspective, a distinction between **coordination for policy implementation** and **coordination for supervising policy implementation** is useful, especially because different institutions are likely to be entrusted with these different functions. The creation of coordination mechanisms should be guided by two key questions: i) coordination for what? and, ii) coordination amongst whom? At the **implementation stage** of specific corruption prevention policies, coordination between the various participating agencies may be needed for the design of shared communication strategies and materials, as well as the development of oversight mechanisms. Where a country has also defined a comprehensive national anti-corruption strategy, coordination for implementation is complex, and might best be located within an agency or a unit of the executive that has the capacity and political weight to compel other governmental institutions to cooperate. At the **oversight stage**, coordination is essential to collect, share and analyse information, to exchange experiences, to draw lessons learned, and to develop remedial actions where needed. In the case of specific preventive policies, the lead role for these functions can be assigned to the respective public policy unit (e.g. the public procurement unit, public ethics office, or the like). By contrast, coordination for oversight of a broad national anti-corruption strategy could be assigned to an agency that is either at an arm's length from the government or an autonomous one. In either case, it should have sufficient political clout and institutional capacity to call upon all participating public institutions to cooperate. Altogether, it should not be forgotten that inter-institutional coordination tends to face challenges due to limitations of institutional capacities, institutional competition, as well as considerable transaction costs.

A fourth function of article 6 refers to the **increase and dissemination of knowledge** about the prevention of corruption. Considering the many needs and opportunities for corruption prevention research, it is neither manageable nor useful to have the research efforts concentrated in just one government organisation. Instead, various public and private institutions should be encouraged to carry out research, although special efforts should be made to gather information in easily accessible, possibly centralised locations. Next, the purpose and the target audience for **disseminating that knowledge** need to be established**.** Disseminating knowledge to public sector audiences could be assigned to a centralised public or semi-public unit, entity or body, possibly the same one that is responsible for collecting corruption-related knowledge. This type of public sector knowledge management on corruption prevention should be closely linked with the coordination and oversight body or bodies. On the other hand, knowledge directed at the broader public typically can have

different objectives, such as generating and sustaining support for anti-corruption reform, informing the public about the effects of corruption prevention policies and measures, and raising awareness of citizens. Some governments have assigned public education and knowledge dissemination functions to specialised anti-corruption agencies, but such arrangements appear limited in range due to capacity constraints and thus inappropriate for large and mainly rural countries. An alternative for States Parties is to build coalitions with civil society and the media to reach out to the public. However, governments need to ensure that civil society and media have the freedom to perform this function and have access to relevant information.

Finally, article 6 requires that anti-corruption body or bodies shall be granted the **necessary independence** as well as the **necessary material resources and specialised staff** to carry out its or their functions effectively. The concept of necessary independence requires context-specific analysis. In particular, it needs to take into account the particular functions that the preventive body or bodies are assigned with and the political and legal contexts they operate in. This paper distinguishes between *organisational*, *functional* and *financial* independence. The type of independence that is necessary and reasonable varies between functions and depends on the related institutional arrangements of a country. Governments also need to take the political decision to allocate the necessary material resources and to offer special training programmes for the staff. These are crucial issues for the viability and effectiveness for the body or bodies that prevent corruption, but also most likely to fall short in many developing countries that lack the necessary resources.

The close reading of article 6, its intimate connection with article 5, and the brief systematic analysis of the implications for its domestic implementation have demonstrated the complexity of the task at hand. Article 6 acknowledges the multiple institutional arrangements that States Parties already have in place to prevent corruption. It also recognises that States Parties need to (re-)define existing or additional institutional arrangements in accordance with the country's legal and institutional systems. Despite this, a rather narrow interpretation of article 6 has emerged in some countries and among some experts in that they are calling for the establishment of only one, specialised anti-corruption agency. There is also still a tendency – including among donors – to create a single institution entrusted with corruption prevention, law enforcement and awareness raising following the successful models of specialised multi-purpose anti-corruption agencies in Hong Kong and Singapore. This inclination gives cause for concern, considering that many countries have had rather negative experiences in trying to replicate these success stories.

The paper argues that with regard to article 6, States Parties need to assign the enumerated functions to a variety of institutions. In doing so, their actions should be guided by defining first what they want to do and then how they want to do it. On that basis, they can identify the most appropriate institution for any given function. This may require a clearer definition of the different institutional mandates and an analysis of the institutional hierarchies. A better understanding of how the different institutions interact with each other is a helpful precondition for the (re-)definition of institutional arrangements for corruption prevention.

1. Introduction

Institutions matter. Their integrity, legitimacy, and functioning suffer if corrupt practices occur, and they need to be permanently on the guard against corruption. More importantly, institutions are also the means through which anti-corruption (as any other) policies are implemented. Because of the multifaceted nature of corruption, a state's response to corruption and corruption-risks will necessarily involve a variety of state and non-state institutions. States may respond through existing institutions, create new ones, or choose a combination of both, all of which may or may not include specialised anti-corruption bodies. In its anti-corruption efforts, a government should also periodically review which institution(s) it needs to strengthen or to establish, clarify their respective mandates and functions, determine how they will interact with each other and allocate the necessary resources. In other words, a state needs to define its *institutional arrangements*[3] for anti-corruption efforts.

Paying tribute to this reality, the main global agreement about the fight against corruption, the United Nations Convention against Corruption (UNCAC)[4], recognises the importance of institutions to prevent and combat corruption.[5] Thus, the UNCAC does not only stipulate **what** should be done to counter corruption – namely, a variety of specific preventive, punitive, and cooperation measures – but also **how** these should be put in practice, i.e., through coordinated anti-corruption policies and institutions, as well as through cooperation among the latter.

This U4 Issue Paper aims to shed light on the complexities and challenges that States Parties face in assigning specific functions for corruption prevention to one or several public institutions. Concretely, it explores the content and intention of one of the central articles of the UNCAC, article 6. This article is intimately linked with, and complements, the prior article (art. 5) which obligates States Parties to "develop, implement or maintain effective, coordinated anti-corruption policies" to prevent corruption. Therefore, it is necessary to view the two articles together, and to read the intention of article 6 not only from a legal-institutional point of view, but also from its implications for public policy making.

By disaggregating article 6 into its different components and linking these to policy processes, this paper aims to offer some key considerations for policy makers and heads of public institutions from States Parties, as well as for donors who support countries in implementing the UNCAC. The focus of this paper is partly motivated by the concern about a potentially too narrow reading of this article, which may not give sufficient consideration to the public policy implications deriving from the close links between article 6 and article 5, on one hand, and between those two articles and all other preventive provisions laid down in Chapter II of the UNCAC, on the other. For instance, some experts and donor organisations advocate for the existence of only **one** specialised corruption prevention agency when it comes to implementing article 6. While such an approach is valid under the Convention, the article clearly provides governments with the option to confer corruption prevention responsibilities to one or several state agencies, which is further reconfirmed in the UNCAC Legislative Guide that states "Article 6 is not intended to refer to the establishment of a specific agency at a specific level. What is needed is the capacity to perform the functions enumerated by the article" (UNODC 2006). In addition, as will be shown in this paper, there are compelling public policy implications favouring the second approach. Article 6 has also been interpreted as calling for the

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[3] For the purpose of this paper, the term "institutional arrangements for anti-corruption efforts" refers to the existence and interaction of different public institutions in a given country that have a mandate and/or a role to play in preventing and combating corruption.

[4] The objectives of the UNCAC are: i) to prevent and combat corruption, ii) to foster international cooperation, and iii) to promote integrity, transparency and the proper management of public affairs. The UNCAC contains, in particular in its Chapter II on measures to prevent corruption, many provisions that fall into the realm of key principles and standards for good governance. In discussing one of these articles, the present paper follows the anti-corruption terminology of the Convention while inferring to the underlying good governance principles.

[5] UNCAC specifically mandates States Parties to ensure the existence of a body or bodies that prevent corruption (art. 6) and to ensure the existence of a body, bodies or persons specialised in combating corruption (art. 36).

existence of one or several **specialised** corruption prevention bodies (OECD 2008, UNODC 2004). Here too, this paper advocates an approach where existing institutions with broader governmental mandates integrate corruption prevention policies and mechanisms into their existing responsibilities.

This U4 Issue Paper covers new terrain to the extent that it draws attention to the complexities related to the effective implementation of article 6 of the UNCAC beyond such crucial issues like existing political will or institutional capacities. Through this, it aims to generate debates among policy makers and experts in specific country situations and to promote further research and analysis.

With the above in mind, this U4 Issues Paper briefly analyses in section 2 the content and intention of article 6, paying special attention to the **functions** (implementation of policies, oversight and coordination of policy implementation and knowledge dissemination) that a preventive body or bodies shall perform and the **characteristics** that it or they shall have (necessary independence to be free from undue influence, material resources, and specialised staff). Section 3 discusses the implications of implementing article 6 from a public policy perspective and explores how the different institutional functions and characteristics referred to in the article can be put into practice. Section 4 raises a series of questions that should be taken into consideration by States Parties and other national actors when defining their country-specific institutional arrangements for corruption prevention. These questions should also be borne in mind by donor agencies when providing technical assistance for the former.

2. What does article 6 intend to achieve?

Article 6 of Chapter II of the UNCAC on "Preventive anti-corruption body or bodies" requires that:

1. Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate, that prevent corruption by such means as: a) Implementing the policies referred to in article 5 of this Convention and, where appropriate, overseeing and coordinating the implementation of those policies; b) Increasing and disseminating knowledge about the prevention of corruption.

2. Each State Party shall grant the body or bodies referred to in paragraph 1 of this article 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. The necessary material resources and specialized staff, as well as the training that such staff may require to carry out their functions, should be provided.

3. Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that may assist other States Parties in developing and implementing specific measures for the prevention of corruption.

In analysing article 6, the first task is to explore its content and intention.[6] The title of this article is "preventive anti-corruption body or bodies" and it is located in the beginning of Chapter II on preventive measures. It is an article that is intimately linked with, and complements, the prior article on anti-corruption policies and practices to prevent corruption (art. 5).

Article 6 is divided into three paragraphs. This Issue Paper will focus on the first two: the requirement to ensure the **existence** of a body or bodies to prevent corruption, and the duty to grant such body/bodies the **necessary means** to carry out the required functions.

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[6] This article emerged in the first negotiation meeting on the basis of a proposal from Austria and the Netherlands and was rooted in the positive valorisation that these countries attributed to article 31 of the Convention on Transnational Organized Crime. The language of the article was enriched during the negotiations on the basis of proposals made by a working group of the Special Committee entrusted with negotiating a convention against corruption. More details can be found in the United Nations (2002).

2.1.   Obligation of States Parties to ensure the existence of a body or bodies to prevent corruption

Article 6 establishes clearly and directly the obligation of each State Party to guarantee the existence of a body or bodies tasked with the prevention of corruption. The specific characteristics of the body or bodies remain subject to the fundamental principles of the legal system of each state. Note that while the characteristics are not prescribed, the duty to establish a body or bodies is fully mandatory.

There can be one body or several bodies

Article 6 offers States Parties the possibility to entrust one body or several bodies with the prevention of corruption. It is important to remember that during the negotiations of the Convention all draft versions always gave States Parties the option to assign or create one or several body or bodies for this purpose. In some countries, one institution such as an anti-corruption agency may centralise an important part of the corruption prevention efforts in a broad mandate to formulate, coordinate, and supervise the implementation of anti-corruption policies. In other countries, this work may be carried out by multiple institutional actors through a complex system of corruption prevention mandates and powers. This is the case when, for example, government ethics offices, internal control organs, and sector-specific agencies like a procurement policy unit share responsibilities in the prevention of corruption. A discussion of these different modalities is subject of the following sections.

The body or bodies shall be preventive

According to paragraph 1 of article 6, the body or bodies are to be preventive. Functions specifically noted include implementing, coordinating, and supervising anti-corruption policies, as well as increasing and disseminating knowledge about corruption prevention. Although these measures are mentioned as examples, there is no doubt that the intention of the drafters was to ensure that each State Party has a body or bodies that carry out functions related to preventive anti-corruption policies. [7]

2.2.   The body or bodies shall be granted the necessary independence and resources

Paragraph 2 of article 6 requires that the body or bodies be granted, first, the necessary independence to perform its or their functions, and second, the resources to carry out such functions.

The concept of **independence** used in the Convention is not qualified and thus left to interpretation.[8] Nevertheless, the independence referred to must be understood as allowing the body or bodies an effective performance. It is possible to assert that States Parties comply with their duties under the Convention if, on the one hand, they provide the body or bodies with the authority and competencies to perform the specific corruption-prevention functions that it have been assigned; and if, on the other hand, they guarantee that the body or bodies will not be subject to undue influence. This guarantee essentially consists of a duty of the state to protect the body or bodies from undue actions of any third party, and a duty of the state itself to abstain from undue interference with the body or bodies. The specific way in which each State Party will comply with this provision is, as in the case of the first paragraph, left subject to the fundamental principles of its legal system.

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[7] Initially, during the negotiations, this article was subject to multiple modifications in relation to the functions that a body or bodies should be performing. In the end, signatories agreed that the objective of the functions to be performed shall be prevention and that prevention is specifically related with public policies, as is laid down in the final text.

[8] During the negotiations of this article, it was impossible to agree upon a more precise meaning of the independence with which the body or bodies to prevent corruption should be provided. Different proposals were negotiated, such as "necessary", "adequate", "operational" independence without reaching agreement about any more precise term (United Nations 2002).

In addition, according to paragraph 2 of article 6, States Parties shall provide the **resources** for the proper functioning of the body or bodies that prevent corruption. These include material resources, specialised staff, and training of this staff. This duty of States Parties is fully mandatory, although the magnitude or volume of the resources and the procedures for its provision are subject to each country's internal laws and decision making processes. It is worth highlighting that the provision of resources to a preventive body or bodies was considered indispensable by the drafters of the Convention. This reflects the recognition that sufficient resources are critical in ensuring independence, thus the link between the two provisions.

3. Public policy implications for the implementation of article 6

This section discusses from a public policy perspective the key issues that need to be considered when States Parties strive to implement article 6, or when donor countries offer technical assistance for these efforts.

The reference of article 6 to a "body or bodies" to prevent corruption reflects the diversity of potential institutional arrangements for corruption prevention that States Parties can choose to define in different country contexts and diverse political and legal systems. In addition to the language of article 6 itself, the legislative guide to the Convention clarifies how article 6 should be translated into practice: "Article 6 is not intended to refer to the establishment of a specific agency at a specific level. What is needed is the *capacity to perform the functions enumerated by the article.*"(UNODC 2006, 16) Those functions include, as said above, implementing the policies referred to in article 5 and, where appropriate, overseeing and coordinating the implementation of those policies, as well as increasing and disseminating knowledge about the prevention of corruption.

It should be noted that the negotiators of the UNCAC believed that diverse administrative and legal measures to prevent corruption, including the range of preventive provisions laid down in Chapter II of the Convention[9] were not enough. Rather, these needed to be given coherence and sustainability in the form of anti-corruption policies, which in turn should be implemented by a preventive anti-corruption body or bodies (Peñailillo, 2008). The following sub-sections will examine what the different functions assigned by article 6 to the preventive body or bodies entail in practice, and how they can be discharged by one or several institutions, keeping in mind the other preventive provisions of the UNCAC.

3.1.   Implementation of anti-corruption policies

As said above, one of the functions that can be attributed by States Parties to the body or bodies referred to in article 6, is the **implementation of anti-corruption policies** as referred to in article 5 of the UNCAC. Before exploring what this connotes, it is helpful to have a brief look at what is meant by anti-corruption policies, in particular in view of the widespread understanding that these refer to broad and comprehensive national anti-corruption strategies.

National anti-corruption policies[10] can take many different forms, such as explicit anti-corruption policies (which have often found their expression in anti-corruption strategies or similar policy documents), transparency or public integrity policies cutting across all public institutions of a given country (or sector), or an amalgamation of public sector reforms which tend to be considered as

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[9] These are: Public sector (art. 7), Codes of conduct for public officials (art. 8), Public procurement and management of public finances (art. 9), Public reporting (art. 10), Measures relating to the judiciary and prosecution services (art. 11), Private sector (art. 12), Participation of society (art. 13), and Measures to prevent money-laundering (art. 14).

[10] This paragraph draws on Hussmann (2007).

implicit anti-corruption agendas themselves.[11] Clear demarcation lines between these options, which are not mutually exclusive, are difficult to establish, and in practice it is common to find a combination of them. It should be noted that the preventive provisions of Chapter II of the UNCAC are often pursued through a series of cross-cutting policies (e.g. legislative agendas, public financial management and administration reform, government and external auditing, transparency and probity policies, to name but a few) under the auspices of different ministries, departments, and other public agencies.[12]

While the creation of public policies is important, their success lies in how well they are implemented. The implementation of preventive anti-corruption policies shares many of the challenges of implementing most other public policies, but is often further complicated by their cross-cutting nature (as they usually affect many public institutions at the same time), and by the fact that they change the distribution of power and the generation of (illicit) income, which generates many, often powerful, opponents.[13]

The effective implementation of anti-corruption policies requires **structured and systematic communication, training, and monitoring processes** with clearly defined roles and responsibilities that need to include at least the following elements:

- Translation of overall policy objectives into clear policy guidelines, including the definition of roles and responsibilities for all affected parties
- Communication of policy requirements to all relevant public agencies and their staff
- Training on policy objectives and their organisational and procedural implications, tailor-made to the specific role of each participating agency and the different levels of its organisational hierarchy
- Development and communication of clear administrative and procedural instructions within all public institutions concerned
- Establishment of organisational arrangements and procedures to maximise cooperation and participation of all relevant parties
- Definition of control requirements and the establishment of adequate monitoring and oversight systems, including an information and communication system and coordination mechanism
- Implementation of a change management plan that includes the identification of change supporters and opponents, as well as incentive packages
- Identification of adequate resources and their allocation

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[11] These public sector core reforms frequently cover the areas of public expenditure management and financial accountability, the civil service, the justice sector, and decentralisation.

[12] For example, the implementation of articles 7 and 8 may fall within the realm of civil service reform or public sector management policies which can be carried out under the leadership of a civil service commission, a ministry of public function, a state reform ministry or the like, but the responsibility for parts of those provisions may be assigned to public ethics offices or preventive anti-corruption agencies. The implementation of article 9 falls within the policies for public financial management, which by definition involves the participation of several public institutions, like the ministry of finance, comptroller or auditor general offices, procurements boards and the like. Similarly, the implementation of article 11 does not depend on the executive but requires that institutions belonging to the judicial system, such as the supreme court, judicial councils, attorney or prosecutor general's offices, or the legislative among others introduce and/or improve measures of integrity.

[13] For example, reforms to make party financing more transparent can affect the distribution of electoral power or reforms in the contracting of public officials may hinder the distribution of positions based on criteria of political or other favouritism. Likewise, simplification of administrative procedures or the introduction of effective oversight and civil society participation can reduce the opportunities for bribe taking, hence additional income of officials.

Realistically, one public institution alone can not carry out these elements for the effective implementation of preventive anti-corruption policies effectively. Rather, they require the interaction of several agencies. For example, in the case of a public probity or access to information policy, a central government agency or unit may be tasked with the communication and training on the policy, but the actual translation into practice needs to occur in all government ministries, departments, and other public agencies. Finally, to be fully effective, such a policy requires an entity or mechanism to receive and deal with grievances and complaints. To take another case – for instance, with public procurement policies – the communication and training may be entrusted to a central procurement policy unit, while the day-to-day implementation may involve the procurement units of all government ministries and agencies, a tender board or similar bodies where they exist, and the comptroller or auditor-general's office, in particular where ex-ante control is the standard. Again, such a policy would ideally also include a mechanism to deal with complaints. The decision of which public institution(s) will be assigned with which responsibility and authority depends on the political, legal, and institutional context in each country.

In the case where a country has a comprehensive national anti-corruption strategy or policy, implementation becomes even more complex, as this often means that a variety of distinct corruption prevention policies are grouped under the umbrella of a comprehensive national policy.[14] The responsibility for implementation of the individual components remains with the respective sector government agencies – as these have the required legal mandate, powers, and institutional capacities – while the overall coordination and oversight may be concentrated within one particular agency (see 3.2 and 3.3). In fact, one of the fallacies of a number of national anti-corruption policies or strategies in different countries has consisted in assigning the overall responsibility for implementation to a national anti-corruption commission, not taking into account that these institutions often lack the authority to demand action from powerful line ministries.[15] If public financial management or public procurement reform is part of a national anti-corruption strategy, for example, the authority for implementing these policies usually rests with the ministry of finance, the comptroller or auditor-general's office and possibly a public tender board or the like, which usually do not have strong incentives to cooperate with an anti-corruption body.

In sum, the implementation of preventive anti-corruption policies referred to in article 6 can only be achieved through the participation of a multiplicity of public institutions and agencies. Preventive anti-corruption policies refer to the wide range of preventive measures of Chapter II and are usually not "dressed" as anti-corruption policies but rather as procurement, probity, transparency, access to information policy, or other. Therefore, to be effective, States Parties need to appoint a variety of different institutions with implementing these policies, most of which often already exist.

3.2. Oversight of anti-corruption policy implementation

A second function that can be attributed by States Parties to the body or bodies referred to in article 6 is **oversight** of the implementation of anti-corruption policies. This function is essential for all parties involved in putting anti-corruption policies into practice. Oversight helps strengthen the effectiveness of implementation by providing feedback on the intended outcomes and outputs, by detecting difficulties and "push-and-pull" factors, and by identifying remedial actions in case of deviations from the envisaged objectives. Objective and regular oversight of anti-corruption policies is an integral part of public accountability, and the transparent communication of its findings is essential to generate credibility for the measures taken within the concerned institutions and the general public. This is also

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[14] National anti-corruption strategies or policies often draw on existing public sector policies and reforms, in particular in the realm of public financial management, civil service and justice reform, decentralisation, the promotion of civil society participation, and media strengthening (Hussmann 2007).

[15] This is a significant problem in many countries and tends to be underestimated by governments themselves. If the coordination role is assigned to a lower ranking agency, constitutional and statutory bodies may withhold cooperation in a quiet and subtle way. The often already weak anti-corruption bodies are thus further weakened (Hussmann 2007).

why article 5 of the UNCAC recognises the need for periodic reviews of "relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption".

Oversight is perhaps the weakest aspect of existing anti-corruption efforts around the world. Recent research shows that the oversight and monitoring aspect of implementing national anti-corruption strategies or policies, in particular, is often weak, formalistic, or non-existent. This lack of effective oversight further complicates the already difficult implementation of anti-corruption policies: without concrete information about results and impact, nobody is, or can be, held accountable, and no corrective measures can be taken (Hussmann 2007). There is furthermore a need to redefine and/or expand the notion of oversight to reflect the complexity of implementation of anti-corruption policies, meaning that a clearer distinction must be made at which institutional level oversight is needed. Therefore, three distinct levels are introduced below: *intra-institutional*, *cross-institutional*, and *national level oversight*. In what follows, it is attempted to identify the general elements for these different levels of oversight. While acknowledging the many challenges that can occur in practice, the following considerations are presented in a somewhat idealised way in order to stimulate further reflection.

Given that most corruption prevention policies are of a cross-cutting character and require for their effective implementation a variety of public institutions (as described in 3.1), oversight mechanisms need to exist within all participating agencies in order to monitor performance in relation to their respective responsibilities and concrete objectives. Such intra-institutional oversight should be part of regular performance monitoring. Further oversight at a cross-institutional level is useful in monitoring the overall impact of each of these policies by looking at the performance of all institutions involved in implementing them. This level of oversight is necessarily based on regular reporting resulting from the lower intra-institutional level oversight of each participating agency. Such cross-institutional policy implementation oversight might best be assigned to one specific public agency, which would need to have the legal mandate, political support, institutional capacities, and necessary independence (see section 3.5) to perform this function. For example, oversight of implementing a country's public procurement policy may be assigned to a central procurement policy office, a national tender board, or another similar agency; oversight of a conflict of interest policy may be assigned to a national ethics office, a ministry of public function, or another similar agency; and oversight of an access to information policy may be assigned to a national transparency office or council, or to an ombudsman office. In addition, in some countries, supreme audit institutions (SAI) have started to explore performance audits, also known as value-for-money audits that analyse cost-effectiveness, operational efficiency, and the general effectiveness of government programs in achieving their objectives (Peñailillo 2009). This kind of cross-institutional oversight should be integrated into the routine monitoring and evaluation of the effectiveness of respective policies.

Finally, States Parties that have a comprehensive national anti-corruption strategy could consider assigning a central national institution with monitoring the performance of its overall implementation. This kind of national level oversight can be useful in keeping track of a country's overall performance in corruption prevention, identifying bottlenecks, and defining priorities. It can also be useful in reporting about compliance with the UNCAC and other anti-corruption conventions to their respective secretariats. However, it must be noted that meaningful results of national level oversight depend on regular and credible reporting of the intra- and cross-institutional oversight mechanisms, an issue that can not be taken for granted in large part due to weak information management systems and low institutional capacities (Peñailillo 2009). In addition, it must not be forgotten that in contrast to intra- and cross-institutional oversight, the establishment of a national level oversight mechanism often comes along with a series of challenges, such as the need for:

- Institutional authority and strong leadership (e.g. Would a national level oversight institution have the mandate and political backing to compel powerful line-ministries or agencies to report?)

- Development of an appropriate information management system, including adequate indicators (e.g. How to make national level reporting compatible with second-level reporting? How to ensure the objectivity, credibility, and rigour of the evaluations? How to allow for independent civil society inputs and participation? [Hussmann 2007][16])

- Institutional capacities (e.g. What kind of human and financial resources would a national level oversight institution get? How to evaluate the oversight system from time to time?)

This is not to say that national level oversight through one specific body should be disregarded, but rather that these and other challenges need to be adequately identified and addressed in the design of the monitoring regime. In many countries, specifically in the developing world, national anti-corruption strategies and some sort of oversight approach exist, but typically more on paper than in practice (Norad 2008, Hussmann 2007). The challenges encountered to date necessitate further analysis in order to generate lessons for future efforts.

3.3. Coordination of anti-corruption policy implementation and oversight

Coordinating the implementation of anti-corruption policies is the third function that can be assigned by States Parties to the body or bodies referred to in article 6. It implies that all public institutions that have a role in implementing "effective and coordinated anti-corruption policies"[17] carry out their activities coherently and with a shared objective. Coordination for policy implementation assumes specific importance if several public and sometimes semi-public institutions have partial responsibilities in implementing anti-corruption policies. Essentially, this is the case in most countries, as there is usually no single institution that would have the complete legal authority and institutional competence to fully implement the multiple corruption prevention mechanisms and tools laid down in Chapter II of the UNCAC (Peñailillo, 2008).

Research indicates that anti-corruption measures and policies have little impact in national contexts that are characterised by low capacities for inter-institutional coordination (Peñailillo, 2008).[18] This is because, as said above, preventive anti-corruption measures and policies often involve a variety of public institutions that have partial mandates in preventing corruption, but whose overall institutional missions are much broader than corruption prevention (e.g. procurement, financial management, civil service administration). Further, the preventive mechanisms also apply to, and need to be implemented by, public institutions that do not have an explicit role in fighting corruption but that deliver public services like health, education, or infrastructure. Because of this complex mix of institutions, which are to a greater or lesser extent involved in implementing cross-cutting anti-corruption policies, a great challenge lies in establishing appropriate coordination mechanisms.[19]

What, then, are the implications for the institutional responsibilities of a body or bodies charged with coordinating anti-corruption policies? From a public policy perspective, a distinction between

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[16] Continuous civil society monitoring of public sector performance in certain areas of the government's activities has helped to bring about change, credibility and public support in a series of countries.

[17] See article 5 of the UNCAC "Each State Party shall […] develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability".

[18] "The National Reports of the follow-up mechanism of the Inter-American Convention against Corruption, e.g., have repeatedly issued recommendations to States Parties to strengthen inter-institutional coordination."

[19] As a recent report indicates, coordination is often weak or non-existent and institutions tasked to perform this function tend not to take a proactive approach (Hussmann 2007).

coordination for **policy implementation** and coordination for **policy oversight** appears useful, precisely because different institutions are likely to be entrusted with these different functions. The creation of coordination mechanisms should be therefore guided by at least the following two key questions: i) coordination for what? and ii) coordination amongst whom?

At the **implementation stage** of specific corruption prevention policies, coordination between the various participating agencies may be needed for the design of programs, the creation of communication strategies and materials, and the development of control and oversight mechanisms. In the case where a country has developed a comprehensive national anti-corruption strategy, coordination for implementation is usually rather complex. Experience suggests that it may be best located within an agency or a unit of the executive which has the capacity and political weight to create the required trust and willingness of other governmental institutions to cooperate (Hussmann 2007). National coordination could also be carried out through a multi-institutional forum with facilitation either permanently assigned to one institution or rotating periodically.

At the **oversight stage**, coordination is essential to collect, share, and analyse information, to exchange experiences, to draw lessons learned, and to identify remedial actions where needed. The lead role for these functions, in the case of specific preventive policies, can be assigned to the respective public policy unit (e.g. the public procurement unit, public ethics office, or the like). By contrast, coordination for oversight of a broad national anti-corruption strategy could be assigned to either an agency that is at an arm's length from the government or an autonomous one. In either case, it should have sufficient political clout and institutional capacity to call upon all participating public institutions to cooperate, while the potential benefits of more credibility and public trust associated with a certain distance from the executive need to be assessed against possible difficulties in getting access to the required information. An alternative could be to assign coordination for regular oversight of a national anti-corruption strategy to an agency of the executive while periodic external evaluations could be commissioned to an independent institution or research institute.

Altogether, it should not be forgotten that in many countries, inter-institutional coordination tends to face challenges due to limitations of institutional capacities, institutional competition as well as considerable transaction costs. The potential benefits should therefore be weighed against expected costs in order to help to design a realistic institutional model.

3.4. Increasing and disseminating knowledge about the prevention of corruption

A fourth function that can be attributed by States Parties to the body or bodies referred to in article 6 is the **generation and dissemination of knowledge** about the prevention of corruption. Knowledge is a key condition for public decision-making and for the development, debate, and oversight of quality policies. It is equally important for creating public demand and maintaining public support for anti-corruption reform. What kind of knowledge is meant, for which purpose it should be produced and disseminated, and at which audience it should be directed, will be discussed below.

Although there is a wealth of information about corruption, it is less clear to what extent there is knowledge about this phenomenon, let alone about its prevention. Also, few success stories are available as to what works in different contextual settings. On the whole, there is urgent need for "transforming knowledge and attitudes into actual behaviour and practices" (Norad 2008). Without going into details about definitional distinctions between information and knowledge, the intrinsic logic of article 6 suggests that the negotiators of the UNCAC recognised that in order to address the problem of corruption, it is crucial to understand its causes, forms, and consequences, the dynamics of how it evolves, and how it can be successfully countered.

The provision of article 6 specifies that knowledge on corruption prevention shall be increased and disseminated. This requirement highlights that States Parties shall produce knowledge not only about corruption itself but also about corruption prevention, including their own preventive policies and

measures. In this sense, the provision links article 6 once again back to article 5, which stipulates that States Parties "shall endeavour to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption". Considering that many different public and private institutions are involved in the generation of knowledge about corruption, it should be remembered that article 6 of the UNCAC entails a specific political and legal responsibility for national governments. Therefore, this paper focuses on the role of government institutions in creating and expanding knowledge.

3.4.1.   Increasing knowledge

What does *increasing* knowledge mean? For what purpose? For which audience? What type of knowledge? In the context of the UNCAC, the increase of knowledge about corruption prevention can pursue different objectives, which are classified for the purpose of this paper into three broad categories:
  i)   knowledge required for policy making, implementation, oversight and monitoring
  ii)   knowledge to be used in trainings and specialisation of public officials
  iii)   knowledge to generate and sustain public support for corruption prevention reforms, including for public awareness-raising purposes.

This knowledge is usually aimed at a variety of different **audiences,** which again can be grouped into three clusters:
  i)   governmental policy and decision-makers
  ii)   public officials for their day-to-day work
  iii)   the public with its multiple individuals, stakeholders and organised groups.

Finally, the type of knowledge to be increased, through research, monitoring reports, and other methods, can take many different **forms**, such as baseline studies, perception surveys, sector studies, political economy studies, stakeholder analysis, indicator mapping, report cards, to name but a few.

From the variety of purposes, audiences, and types of knowledge that need to be considered, it becomes clear that many different institutions can and must take part in these efforts. Governmental research on corruption and its prevention has often been a function assigned to specialised anti-corruption agencies (ACAs). However, there is little qualitative evidence of how they have performed so far, and indications are that cost-intensive research activities are likely to be outsourced due to capacity constraints (Meagher 2004, de Sousa 2006).[20] This points to the question of whether research on corruption prevention actually needs to be concentrated in specialised agencies, or whether it can be assigned to universities, research institutes, national statistic institutes, think tanks and even civil society organisations. In addition, research and analysis conducted by ACAs, which are often close to the executive and/or tasked with investigation, may run the risk of being politicised – a risk that can potentially devalue the quality and objectivity of the knowledge gathered.

In sum, considering the many needs and opportunities for corruption prevention research, it does not seem manageable or useful to have the research concentrated in one government organisation. Rather, special effort should be made to gather information in easily accessible, possibly centralised locations, as explained below.

3.4.2.   Knowledge dissemination

Before knowledge on corruption prevention can be disseminated it needs to be collected. This is no small challenge since, due to the cross-cutting nature of the problem, knowledge is spread across different institutions and across different scientific disciplines. **Gathering existing knowledge** in a centralised and easily accessible place, e.g. a web-site or internet-based library, would make it

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[20] Meagher, in reviewing around 30 such agencies, identifies "preventive research and analysis" as one of six usual functions of them.

available to the greatest possible number of institutions and stakeholders.[21] With the main research thus compiled, it is also easier to identify research gaps and available expertise. Such a task could be assigned to a public entity or a public university, for example, but it should be borne in mind that to do this effectively, a considerable amount of resources needs to be allocated. On the other hand, the relative ease of knowledge transfer with information and communication technologies is an asset in countries with reasonable levels of connectivity. When collecting knowledge, one might already consider for what purpose and to which target audience it needs to be disseminated later.

Disseminating knowledge to public sector institutions:

Disseminating knowledge on corruption and corruption prevention is important at different stages of the public policy process of anti-corruption reform, but particularly for implementation, when the training of public officials to build their capacities to operationalise the respective policies is key to success. However, corruption-related research often consists of long and detailed reports in academic and/or specialised language. In disseminating this knowledge, the entrusted body or bodies should pay specific attention to doing so in a format and style that is adapted to the target audience. Dissemination to the public sector audience could be assigned to a centralised public or semi-public unit, entity, or body – perhaps the same one that is responsible for collecting the relevant corruption related knowledge, as noted above – but the potential linkages with public sector training institutes or the like would need to be borne in mind. Furthermore, as institutions involved in implementing anti-corruption policies will likely themselves produce some kind of knowledge about their efforts, impact and challenges, public knowledge management on corruption prevention should be closely linked with the coordination and oversight function discussed above (section 3.3).

Disseminating knowledge to the wider public:

There are different objectives for disseminating knowledge to the wider public, among them generating and sustaining support for anti-corruption reform, giving account about the effects of public policies and measures to prevent corruption, raising awareness of citizens,[22] or even go beyond that by engaging in public education (Marquette 2007, Keen 2000).[23] Some governments have assigned a public education and knowledge dissemination function to specialised anti-corruption agencies, based on the tripartite approach (prevention–repression–education) of the Hong Kong Independent Commission Against Corruption (ICAC). In fact, it is claimed that much of the success of the ICAC is due to their work in public education. However, this success has been backed by considerable resources for education in very small and highly urbanised areas and therefore the experience is not easily transferable (Marquette 2007).[24] In large and rural countries, an alternative and more effective strategy may be to build coalitions with civil society and the media for broader outreach. In that case, however, governments need to ensure that civil society and media have the freedom to perform this function and have access to relevant information. Special emphasis should be given to expanding the awareness-raising beyond corruption and ethics per se, making sure to inform the public about the wide range of corruption prevention measures and their role in making the measures work. This

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[21] The Indonesian Corruption Eradication Commission KPK, for example, is following this approach through establishing an Anti-Corruption Clearing House.

[22] There are several reasons for that: First, it is assumed that the public is a watchdog over government activities. Second, citizens are not only victims to corruption, but also perpetrators (by offering bribes, buying jobs, etc). Third, politicians, civil servants, judges, etc. are citizens themselves and their awareness about the issue is believed to have positive effects on public sector conduct (Marquette 2007).

[23] Public education may include the dissemination of information and increase in awareness about corruption, the changing of perceptions and attitudes towards corruption, and the passing on of new skills and abilities needed to counter corruption" (Keen 2000, 6).

[24] As advised in Doig, Watt and Williams (2005) States Parties should therefore consider the following question: "Should ACCs engage in community education on corruption in large, rural societies? ACCs are usually small organisations, whose main skill sets are not those of educators. All states have education departments – should they assume responsibility for community education on corruption?"

includes the dissemination of knowledge about corruption prevention principles such as transparency, accountability, participation, and access to information.

In sum, as efforts to increase and dissemination of knowledge about corruption prevention are typically distributed across many state and non-state institutions, States Parties should focus on creating an enabling environment for the production, collection, easy access to and free flow of this knowledge, in particular by guaranteeing effective access to public information.[25] They should also encourage independent research. However, with regard to the collection of knowledge and its dissemination to the public sector in particular, States Parties may consider tasking a single agency with these functions, provided it has sufficient independence and resources. Such an agency can also help identify knowledge gaps.

3.5. The necessary means for the body or bodies: independence and resources

As noted in section 2.2, article 6 stipulates that States Parties shall grant the body or bodies the necessary independence as well as the necessary material resources and specialised staff to carry out its or their function effectively. While both characteristics are crucial, this paper specifically explores from a public policy perspective what *necessary independence* means in light of the above discussed functions. First, the paper will provide a conceptual framework for distinguishing different types of independence. For this purpose, the distinctions used by the International Organisation of Supreme Audit Institutions (INTOSAI) are particularly illustrative.[26] In a second step, a brief discussion of different examples of corruption prevention bodies points to the need to identify the "necessary independence" as it relates to the function and/or objective of the body or bodies in question.

INTOSAI classifies three categories of institutional independence as *organisational*, *functional* and *financial* independence. *Organisational independence* is defined as the least possible degree of government participation in the appointment of SAI authorities, implementation of its functions and its decision-making. *Functional independence* refers to ensuring that SAIs can carry out their functions without the undue interference of any third party or the executive, as would be the case if the latter could impede the implementation of an audit or if it could influence in the priorities, methods, or results of the audits. *Financial independence* refers to the impossibility of the government to impede or restrict SAI activities by reducing its budget and/or the budget of other associated agencies. Although these conceptual distinctions refer specifically to supreme audit institutions, they are in fact applicable far more broadly and useful in understanding the forms of independence that may apply to preventive bodies in different political and legal contexts.

In order to determine the type and level of independence that a body or bodies that prevent corruption should have, it is necessary to consider at least two factors: the *political* and *legal context* of the body in question, and the *functions* assigned to it. To return to the example of a SAI, in a parliamentary democracy, a supreme audit institution is often the technical arm of the parliament, which is, in turn, the country's political control organ. In such a context, the SAI should have organisational, functional, and ideally financial independence from the executive, as its main role would be to ensure the external control of the executive. However, the SAI will possibly have close organisational dependence vis-à-vis the parliament and the functional independence between the two may be minor.[27] By contrast, in the case of a government or public sector ethics office, the scenario is different. Given that

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[25] Which is included in the preventive measures of the UNCAC in any event.

[26] The International Organization of Supreme Audit Institutions (INTOSAI) was founded in 1953 as an autonomous, independent, and non-political organisation with the aim of promoting the exchange of ideas and experience between its members, the supreme audit institutions (SAIs) of countries around the globe, in the field of government audit.

[27] The organisational dependence of a SAI on parliament should be moderated, though, through a period of time during which the head of the SAI has security of tenure.

such an office usually exists as part of the executive, its organisational, functional and even financial independence from the executive is naturally lower. In such a situation, however, it is desirable that an ethics office enjoys at least functional independence from other governmental institutions to prevent their possible undue interference in its decision-making.

Given that article 6 does not provide detail on the requirement of *necessary independence*, applying the above distinctions to the body or bodies assigned with corruption prevention requires context-specific analysis – considering not only the legal, institutional and political systems of each country, but also the particular function that the preventive body or bodies are assigned. Hence, with regard to the **implementation** of anti-corruption policies and their coordination, necessary independence refers mainly to *financial independence* (meaning that the body or bodies shall be guaranteed predictable resources to perform their functions), simply because most implementing agencies form part of the executive and are therefore unlikely to be organisationally independent. They may also require a level of *functional independence*, to the degree that any other government body cannot unduly interfere with its/their initiatives. For example, when a civil service commission or similar public agency tries to implement a merit-based appointment system for high-level civil servants, it should be free from undue influence from political parties, ministers, other government officials and/or interest groups who might want to influence the design of the system or skew the selection process itself.

Similarly, the government needs to ensure that the institution entrusted with the **coordination** of policy implementation can carry out its function without undue interference of any other government body. This requires *financial independence* as well as sufficient *functional independence* in legal and political terms, so that it cannot be sidelined or disregarded by other powerful public agencies.

For the body or bodies entrusted with an **oversight** function, the necessary independence will differ according to the type of oversight exercised. More precisely, for intra-institutional oversight (e.g. through performance monitoring, internal auditing, etc.) *functional independence* is required at a minimum; for cross-institutional oversight (e.g. in the case of a procurement policy by a procurement policy unit or a national tender board) both *functional* and *financial independence* are important. For national level oversight of a comprehensive anti-corruption strategy, *functional* and *financial independence* is crucial while *organisational independence* would be desirable so that this function can be performed without undue interference.

With regard to the **increase and dissemination of knowledge**, *organisational* and *functional independence* from the executive may be advantageous in order to maintain political neutrality – an attribute that could be of great value to a body or bodies entrusted with this function. Such an institution could be essential in framing the public discourse on corruption and how to address it, generating objective lessons learned, and providing a vision on the way forward that is beyond party politics.

Finally, with regard to the States Parties' obligation to grant the body or bodies with the necessary material resources and specialised staff, it is essential for the government to have procedures in place and to take the political decision to allocate the necessary material resources, offer special career development and implement training programmes for specialised staff. While these may be essential, or even minimum requirements for the viability and effectiveness for the body or bodies that prevent corruption, they may nevertheless constitute a serious challenge in many developing countries with limited resources.

4. Different options for institutional arrangements for corruption prevention

The close reading of article 6 of the UNCAC, its intimate connection with article 5, and the brief systematic analysis of the implications for its implementation, have shown the complexity of responsibilities of States Parties reflected in this article. By concentrating on key functions and characteristics that an effective corruption prevention body or bodies should have, and by avoiding to mandate the existence of only one specialised agency, article 6 acknowledges the multiple institutional arrangements that States Parties already have in place to prevent corruption. It also recognises that States Parties need to (re-)define existing or additional institutional arrangements in accordance with the country's legal and institutional systems.

However, as noted earlier, a rather narrow interpretation of article 6 has emerged in some countries and among some experts that is expressed in calling for the establishment of one specialised anti-corruption agency as an obligation to fulfil the obligations of article 6, or in interpreting article 6 as providing the basis for the creation of "specialised" corruption prevention bodies (OECD, 2008; UNODC, 2004). There is also still a tendency, particularly in countries with perceived widespread corruption, to create a single institution entrusted with corruption prevention, law enforcement, and awareness raising functions, following the successful models of specialised multi-purpose anti-corruption agencies in Hong Kong, Singapore, and Botswana. Considering that many countries have had rather negative experiences when trying to replicate these famous success stories (for a variety of reasons, the discussion of which is beyond the scope of this paper), this tendency gives cause for concern. Governments have also often used the creation of specialised anti-corruption agencies as a political tool to publicly demonstrate their (often hollow) anti-corruption commitment. In addition, despite an increasing body of evidence about the failures and pitfalls of such inadequately exported approaches, many donor agencies still provide considerable support to these undertakings, which can easily result in a waste of resources and disappointed public expectations.

Therefore, it should be recalled that context matters. Above all, careful analysis is needed to define which institutional arrangements are most likely successful to fulfil the spirit of article 6 in a given country, considering the specific political and institutional contexts. In this sense, it is useful to revert to the legislative guide of UNODC: "Article 6 is not intended to refer to the establishment of a specific agency at a specific level. What is needed is the capacity to perform the functions enumerated by the article" (UNODC 2006, 16).

As shown in this paper, a review of the public policy implications that derive from article 6 indicates that States Parties will most likely need to assign the enumerated functions to a variety of institutions. In doing so, their actions should be guided by defining first what they want to do and then how to do it. On that basis, they can identify the most appropriate institution for any given function. This may require a clearer definition of the different institutional mandates and an analysis of the institutional hierarchies for a better understanding of how the different institutions interact with each other. States Parties should also pay specific attention to avoiding simply "importing" models from other country settings.

Bringing harmony to a country's institutional framework for corruption prevention is important yet quite challenging in practice. Institutions have often evolved in an ad hoc manner and are not necessarily based on clarity of purpose or as a result of comprehensive planning. Also, anti-corruption initiatives are frequently driven from different political directions and motivations, as well as different institutional leaderships. Overly formal approaches may not bring about the desired results and much attention needs to be paid to sustaining existing and effective institutional arrangements. Ideally, lessons learned from existing examples of institutional arrangements for corruption prevention in different countries should be drawn upon. However, so far there seems to be little research in this field, in particular with regard to the implementation, oversight, and coordination of anti-corruption policies. This lack of documented knowledge may be due to the fact that that much attention to date

has centred on ACAs. Nevertheless, some recent publications have started to look beyond ACAs and it would be valuable to pursue this kind of research further.[28]

5. Concluding remarks

This U4 Issue Paper has endeavoured to open up and nurture current debates of States Parties and experts about the implementation of article 6 of the UNCAC. It has explored the content and intention of article 6 and has shown the potential of this article in providing the basis for coherent and sustainable corruption prevention policies and institutions. It has also shown the challenges for putting this article into practice. In light of the above, the paper advocates for the elaboration of a sound understanding and analysis of a country's corruption prevention policies and institutions **before** a State Party sets out to (re-)design its institutional arrangements to fulfil its obligations under article 6. It explicitly avoids identifying or providing solutions, as these have to be developed in each specific country context. However, the public policy implications derived from the content of article 6 indicate that States Parties should assign the functions enumerated in article 6 to a variety of public institutions, as one public institution alone cannot carry them out effectively. Also, the paper advocates for an approach in which existing institutions with broader governmental mandates integrate corruption prevention policies and mechanisms into their institutional management approaches. Finally, the paper aims to assist States Parties in implementing article 6 of the UNCAC, as well as other actors such as donor countries who seek to support countries in doing so. The following are the main conclusions that can be drawn:

- It should be remembered that article 6 obliges States Parties to the UNCAC to ensure the existence of a body or bodies to prevent corruption by such means as implementing, overseeing and coordinating anti-corruption policies (as referred to in art. 5), by increasing and disseminating knowledge. To accomplish these tasks, States Parties are further required to ensure adequate independence, staff, and resources.

- The specific way to fulfil this commitment shall be defined by each State Party in accordance with the fundamental principles of its legal system. Hence, **there are many possible ways to comply with article 6.**

- No matter the way in which a country chooses to comply with article 6 internally, the State Party needs to guarantee that there is an efficient and effective system for communication and information provision regarding corruption prevention with the Conference of States Parties and the United Nations. This may imply centralising the relevant information for this purpose in one public institution.

- **The functions referred to in article 6 need to be performed by a variety of public institutions**, as the broad range of anti-corruption policies and measures noted in Chapter II of the UNCAC cannot be effectively implemented by one agency alone. A specialised anti-corruption body could be one of several institutions to comply with the intention of this article.

- **In most countries, there is not a hierarchy of certain corruption prevention institutions over others**. This is often not the case even when a country has a specialised anti-corruption agency. Many of them have an advisory character or are tasked with the coordination and oversight of anti-corruption policies but lack the legal faculty and political power to compel other agencies to follow instructions or cooperate. The advantage of the greater scope of action and reach that a group of corruption prevention institutions can achieve contrasts with the difficulty in ensuring coherence and unity of action between all institutional actors involved. Therefore, **inter-institutional coordination is crucial, including shared**

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[28] For example, Peñailillo (2008) on Chile's institutional capacity for UNCAC implementation from 2008 provides some insights, as does the UNDP (2005) study on institutional arrangements to combat corruption.

objectives, tangible benefits for all involved and a clear distribution of roles and responsibilities.

- The task of **anti-corruption policy implementation can not be assigned to one specialised anti-corruption agency as the legal and institutional mandates for different corruption prevention measures and policies are distributed across a variety of ministries and public agencies.** Entrusting a national level body, e.g. a specialised anti-corruption agency, with the effective implementation of national anti-corruption policies or a national strategy can at best refer to coordination and oversight.

- **Oversight of anti-corruption policy implementation needs to take place at different levels of the institutional hierarchy and should be integrated into routine performance monitoring of the institutions affected by the preventive policies** (intra-institutional oversight to ensure policy application throughout the concerned institution, cross-institutional oversight if several institutions participate in the implementation of a specific policy, national level oversight in case the country has a comprehensive national anti-corruption strategy/policy). In many countries, achieving this necessary but complex oversight may require a gradual approach in line with the institutional capacities.

- When considering **coordinating policy implementation, different purposes can be pursued through coordination at different stages of the policy cycle** (e.g. effective implementation, oversight, assessment of lessons learned, policy adjustments) and **coordination is needed at different levels** (intra-institutional, inter-institutional and at the national level). A variety of institutions usually participates in parts of these tasks according to the strategic orientations of the anti-corruption policies. This is also the case where one institution has a special and broader mandate to coordinate policies at the national level.

- In contrast to policy implementation, **national oversight and coordination of anti-corruption policies could be assigned to one particular institution or agency**. Special attention is needed to ensure that the body has sufficient political authority, the adequate legal mandate and powers to compel powerful ministries to comply with their own commitments as well as with executive instructions. Specialised anti-corruption agencies, if already existent, could be in a good position to facilitate coordination and oversight as long as they can operate in tandem with the aforementioned top-level political authorities. However, as pointed out in section 3, there are many different options.

- **The increase and dissemination of knowledge about corruption prevention is usually distributed across many state and non-state institutions.** Hence, States Parties need to ensure an enabling environment for easy access and free flow of this knowledge, in particular by **guaranteeing effective access to public information**. While States Parties should promote the generation of knowledge through many different actors in order to enrich and broaden existing knowledge, **the gathering of knowledge about corruption prevention and dissemination to the public sector, in particular, could be centralised in one particular agency**, possibly at an arm's length from the executive to guarantee its independence. **For the dissemination of knowledge to the public, coalitions with civil society organisations should be sought.**

- In view of the, often formidable, failure of broadly mandated anti-corruption agencies in coordinating and monitoring corruption prevention measures, it may be time to more seriously consider alternative options. In this regard, **further research is needed to examine existing institutional arrangements for corruption prevention** in different countries and the functions they serve to draw lessons for States Parties regarding compliance with article 6 of the UNCAC.[29] **Additional analysis of the performance of specialised agencies in terms of their performance is likewise essential to extract lessons and identify potential remedies.**

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[29] The research on Chile's institutional capacity for UNCAC implementation may provide a useful example. See Peñailillo (2008).

Finally, despite the rhetoric about the need for country-specific solutions, there is a certain danger intrinsic to the international "hype" around the UNCAC and the desire of States Parties and development partners to present quick and visible initiatives. This easily leads to "one-size-fits-all" or "fast-to-implement" approaches, sacrificing in the process thorough assessments of what countries actually need compared to what they already have. The creation of single, specialised anti-corruption agencies is relatively "easy" and therefore appealing, although they have been promoted in many cases more as a supposed quick-fix for "unwilling" governments and donors instead of tools for serious reforms. The tendency to favour certain models and try to copy them to other countries assuming that they would work the same way would hinder rather than help meaningful implementation of the UNCAC. Instead, States Parties should seek ways to implement article 6 of the UNCAC in a country-specific manner, with the intrinsic purpose of the UN Convention – guaranteeing **integrity**, **transparency**, **accountability**, and **proper management of public affairs** – as the guiding principle.

6. Literature

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Abstract

What kind of institutions does a state need to have in place to effectively prevent corruption? What does it mean, when article 6 of the UN Convention against Corruption (UNCAC) requires states to ensure the existence of a body or bodies to prevent corruption? It has been argued that this calls for specialised preventive anti corruption agencies, preferably one. While this might be one of several options, this U4 Issue Paper argues differently. As the UNCAC requires such bodies to be in place not only for coordinating and supervising preventive anti corruption policies, but also for their implementation, it is unavoidable that this implies the involvement of a variety of institutions. By unravelling the functions prescribed in article 6 from a public policy perspective, this paper also sets into perspective what is meant by granting the body or bodies the "necessary independence" to enable them to carry out its or their functions effectively and without undue influence. Obviously, this "necessary independence" will look differently depending on whether one has to coordinate, supervise, or implement an anti corruption policy, not to mention increasing and disseminating knowledge on corruption prevention, as also stipulated in article 6.