

CHAPTER II

ASSESSMENT OF CORRUPTION LEVELS

TOOL #1

ASSESSMENT OF THE NATURE AND EXTENT OF CORRUPTION

Tool #1 is used to provide quantitative measurements of the extent of corruption in a country or within specific sectors of a country. It also provides qualitative assessments of the types of corruption that are prevalent, how corruption occurs and what may be causing or contributing to it.

Tool #1 will generally be used prior to the development of the national anti-corruption strategy:

- In the preliminary phase, to assist with the development of the national anti-corruption strategy, to help set priorities, to make a preliminary estimate of how long the strategy will last and to determine the resources required to implement it. The preliminary assessment should cover all sectors of the public administration and, if necessary, the private sector, to ensure no detail is overlooked. The data gathered at this stage will be the baseline against which future progress will be assessed.
- In the follow-up phase, to help assess progress against the baseline data gathered at the preliminary stage, to provide periodic information about the implementation of strategic elements and their effects on corruption, and to help decide how strategic elements/priorities can be adapted in the face of strategic successes and failures.
- To help in setting clear and reasonable objectives for the strategy and each of its elements, and measurable performance indicators for those objectives.
- To raise the awareness of key stakeholders and the public of the true nature, extent and impact of corruption. Awareness-raising will help foster understanding of the anti-corruption strategy, mobilize support for anti-corruption measures and encourage and empower populations to expect and insist on high standards of public service integrity and performance.
- To provide the basis of assistance to other countries in their efforts against corruption.

TYPES OF DATA TO BE SOUGHT

- **Information about where corruption is occurring.**

Such information may include the identification of particular public or private sector activities, institutions or relationships. Data are often gathered about particular Government agencies, for example, or about

relationships or processes, such as public service employment or the making of contracts for goods or services.

- **Information about what types of corruption are occurring.**

While an overall assessment of what types of corruption are prevalent may be undertaken, a more detailed focus will be usually involved on what types of corruption tend to occur in each specific agency, relationship or process for which corruption has been identified as a problem. Research may show that bribery is a major problem in Government contracting, for example, while public service appointments may be more affected by nepotism.

- **Information about the costs and effects of corruption.**

Understanding the relative effects of corruption is critical to setting priorities and mobilizing support for anti-corruption efforts. Where possible, information should include the direct, economic costs plus an assessment of indirect and intangible human consequences.

- **Factors that contribute to or are associated with corruption.**

There is seldom a single identifiable cause of a particular occurrence of corruption but a number of contributing factors will usually be identifiable. They often include factors such as poverty or the low social and economic status of public officials that makes them more susceptible to bribery; the presence of specific corrupting influences, such as organized crime; or structural factors, such as overly broad discretionary powers and a general lack of monitoring and accountability. Information about such factors is critical to understanding the nature of the corruption itself and to formulating countermeasures. The presence of known contributing factors may also lead researchers or investigators to identify previously unknown or unsuspected occurrences of corruption.

- **The subjective perception of corruption by those involved or affected by it.**

All assessments of corruption should include objective measurements (of what is actually occurring) and subjective assessments (of how those involved perceive or understand what is occurring). The information is needed because the reactions of people to anti-corruption efforts will be governed by their own perceptions. The following specific areas should be researched:

- The impressions of those involved (offenders, victims and others) about the types of corruption occurring;
- The impressions of those involved about relevant rules and standards of conduct, and whether corruption is in breach of those standards;
- The impressions of those involved about the actual impact or effects of the corruption; and
- The views of those involved as to what should be done about corruption and which of the available remedies may prove effective or ineffective in their particular circumstances.

METHODS OF GATHERING DATA

Corruption is, by its nature, a covert activity. It makes accurate information hard to obtain and gives many of those involved a motive for distorting or falsifying any information they do provide. To obtain an accurate assessment, therefore, it is essential to obtain information from as many sources as possible and to ensure diversity in the sources and methods used. That enables biases or errors due to falsification, sampling or other problems to be identified and either taken into account or eliminated. The major techniques for gathering information include:

Desk Review.

An early step is usually to gather as much data as possible from pre-existing sources: previous research or assessments by academics, interest groups, public officials, auditors-general or ombudsmen, as well as information from media reports.

Surveys.

Conducting surveys is an important means of assessment. Surveys gather information from responses to written questionnaires or verbal interviews. They may be directed at general populations or be samples specifically chosen for comparison with other samples. They may gather objective data (for example, the nature or frequency of occurrences of corruption known to the respondent) or subjective data (the views, perceptions or opinions of the respondent).

A wide range of data can be obtained about the types, nature, extent and locations of corruption, the effectiveness of efforts against it and the public perceptions of all of those. Considerable expertise is needed, however, to gather valid data and to interpret them correctly.

When conducting a survey, it is important to choose representative samples of the population, as the nature of the sample is a major factor in assessing the survey results. A general public survey may show that only a small part of the population has experienced public sector corruption; a sample selected from among those who have had some contact with the Government or a particular governmental area or process, such as employment or contracting, may produce a different result. Results of samples from Government insiders may also differ from samples based on outsiders.

The comparison of data taken from different samples is one valuable element of such research but comparisons can be valid only if the samples were correctly selected and identified in the first place. For general public surveys, care must be taken to sample all sectors of the population. A common error is to oversample urban areas, where people are more accessible at a lower cost, and to undersample rural or remote populations. Valid results will not be yielded if the reality or perception of corruption is different in urban and rural areas. Samples selected more narrowly, for example by asking the users to comment on a particular service, must also ensure that a full range of service-users is approached. Anonymity and confidentiality are also important; corrupt officials will not provide information if they fear disciplinary or criminal sanctions, and many victims may also fear retaliation if they provide information.

The formulation of survey instruments is critical. Questions must be drafted in a way that can be understood by all those to be surveyed, regardless of background or educational level. The question must be understood in the same way by all survey respondents. In cases where many respondents are illiterate or deemed unlikely to respond to a written questionnaire, telephone or personal interviews are often used. In such cases, it is essential to train interviewers to ensure that they all ask the same questions using the same terminology.

Focus Groups.

Another diagnostic technique used in country assessments is focus groups, whereby targeted interest groups in Government and society hold in-depth discussion sessions. The technique usually produces qualitative rather than quantitative assessments, including detailed information concerning views on corruption, precipitating causes of corruption and valuable ideas on how the Government can combat it. Specific agendas for focus groups can be set in advance, or developed individually, either as the group starts its work or by advance consultations with the participants. Focus groups can also be used to generate preliminary assessments as the basis of further research, but should not be the only method used for such assessments. A focus group of judges may well be useful in developing research into corruption in the legal or criminal justice system, for example, but others, such as law enforcement personnel, prosecutors or court officials, may yield different results.

Case Studies.

Following basic quantitative and qualitative assessments that identify the extent of corruption and where it is occurring, case studies can be used to provide more detailed qualitative information. Specific occurrences of corruption are identified and examined in detail to identify the type of corruption involved, exactly how it occurred, who was involved and in what manner, what impact the occurrence had, what was done as a result, and the impact of any action taken. Information is usually gathered by interviewing those involved, although other sources, such as court documents or reports, may also be used if reliable. Case studies are particularly useful in assessing the process of corruption and the relationships that exist between participants, observers and others, as well as between causal or contributing factors. They are also useful in educating officials and members of the public about corruption. As with other areas of research, care in the selection or sampling of cases is important. Cases may be chosen as "typical" examples of a particular problem, for example, or attempts may be made to identify a series of cases that exemplify the full range of a particular problem or of corruption in general.

Field Observation.

Observers can be sent to monitor specific activities directly. If they are well trained, they can obtain very detailed information. Field observation, however, is too expensive and time-consuming to permit its widespread use; it is usually limited to the follow-up of other, more general, methods and to detailed examinations of particular problem areas.

Field observers can be directed to gather and report information about any aspect of the activity being observed, and this can generate data not available using the majority of other methods, for example the speed, efficiency or courtesy with which public servants interact with the public. In one recent example, as part of a comprehensive assessment of judicial integrity and capacity in Nigeria, field observers attended courts and reported on whether they were adjourning on time and how many hours a day they were actually sitting.

In many cases, it can be difficult to distinguish between the use of observers, whose function is simply to gather data for research purposes, and investigative operations, the function of which is to identify wrongdoers and gather the evidence needed for prosecution or discipline. That is particularly true where observers are working under cover or anonymously, which will often be the case so as to ensure that their presence does not influence the conduct they are observing. Officials working in countries where constitutional or legal constraints apply to criminal investigations should bear in mind that constraints may apply to covert or anonymous observation or may operate to prevent the use of information thus obtained against offenders in any subsequent prosecution. Observers should also be given appropriate rules or guidelines governing whether or when to notify law enforcement agencies if serious wrongdoing is observed.

Professional assessment of legal and other provisions and practices

In most countries, criminal and administrative law provisions intended to prevent, deter or control corruption already exist and range from criminal offences to breaches of professional codes of conduct or standards of practice. The most important of these usually include: criminal offences, such as bribery; public service rules, such as those governing disclosure and conflict of interest; and the regulations and practices of key professionals, such as lawyers and accountants. Other sectors, such as the medical or engineering professions and the insurance industry, may also have codes or standards containing elements relevant to efforts against corruption. An assessment of those, conducted and compiled by researchers who are professionally qualified but independent of the sectors or bodies under review, can be conducted. Where appropriate, professional bodies can also be requested to review and report.

Reviews should be compiled to generate a complete inventory of anti-corruption measures that can then be used for the following purposes:

- Comparison of each individual sector with the inventory to determine whether elements present in other sectors are absent and, if so, whether they should be added;
- Comparison of parallel or similar rules adopted by different sectors to determine which is the most effective and to advise improvements to others;
- Survey of members of the profession and their clients, once the measures have been identified, to assess their views as to whether each measure was effective, and if not, why not; and
- Identification of gaps and inconsistencies and their closure or reconciliation.

The entire legislative anti-corruption framework should be assessed which will require some initial consideration of which laws could or might be used against corruption and how. Such an assessment will include:

- Criminal laws including the relevant offences; elements of criminal procedure; laws governing the liability of public officials, and as well as laws governing the tracing and seizure of the proceeds of corruption and, where applicable, other property used to commit or in connection with such offences;
- Elements treated as regulatory or administrative law by most countries, including relevant public service standards and practices and regulations governing key functions, such as the operation of the financial services sector (for example, banking and the public trading of stocks, securities and commodities), the employment of public servants and the making of Government contracts for goods and services;
- Other areas of law, including legislation governing court procedures and the substantive and procedural rules governing the use of civil litigation as a means of seeking redress for malfeasance or negligence attributable to corruption; and
- Any area of professional practice governed by established rules, whether enacted by the State or adopted by the profession itself, may also be open to internal or external review. Critical areas include the legal and accounting professions and subgroups, such as judges and prosecutors; but other self-governing professional or quasi-professional bodies may also be worth examining. It should be noted that the primary purpose of such examination is not necessarily to identify corruption but to assess what measures have been developed against it, so that they can be used as the basis of reforms for other professions, or to identify and deal with inconsistencies or gaps.

Assessment of institutions and institutional relationships.

Most of the assessment of institutions and institutional relationships will involve consideration of their capacity or potential capacity to fight corruption (Tool #2). They should also be assessed to determine the nature and extent of corruption within each, as well as in the context of the relationships between them. The assessment should include public agencies and institutions as well as relevant elements of civil society, including the media, academe, professional bodies and relevant interest groups. The methods set out under Tool #1 can be used for this purpose.

PRECONDITIONS AND RISKS

The major risks associated with assessment are that data obtained will be inaccurate, or that they will be misinterpreted, leading to the development of inappropriate anti-corruption strategies or to incorrect conclusions about progress against corruption, both of which represent a serious threat. If initial strategies are too conservative, a country can fall short of its potential in dealing with corruption and, if they are too ambitious, the strategies are likely to fail. If populations are convinced that the national strategy is not working, either because it was too ambitious or because the data used to assess

progress are not valid, compliance with anti-corruption measures will decline, leading to further erosion of the strategy.

The methods for gathering, analysing and reporting data and conclusions must therefore be rigorous and transparent. Not only must the assessments be valid, but they must be perceived to be valid by independent experts and by the population as a whole.

TOOL #2

ASSESSMENT OF INSTITUTIONAL CAPABILITIES AND RESPONSES TO CORRUPTION

Tool #2 deals with the assessment of institutions. Its aims are:

- To determine the potential of each institution to participate, at the outset, in the anti-corruption strategy; and
- To measure the degree of success achieved at each stage to determine the role each institution could or should be called upon to play in subsequent stages.

Institutional assessment is also important for the development of strategies and the setting of priorities. In many areas, it will overlap with the assessment described in Tool #1. For example, an assessment of judges or courts showing high levels of institutional corruption using Tool #1 would also, in most cases, indicate that the potential of judges to fight corruption was relatively low. That could, in turn, lead to giving the reform of the judiciary a high priority in the early stages of the strategy. Elements of the strategy depending heavily on the rule of law and impartial judges and courts would have to be deferred until a further assessment showed the judiciary had developed sufficient capacity against corruption.

DETERMINING WHICH INSTITUTIONS REQUIRE ASSESSMENT, AND SETTING PRIORITIES

The broad and pervasive nature of corruption may require that virtually every public institution, as well as many elements of civil society and the private sector, should be assessed at some point. To conserve resources, however, and maintain a relatively focused national strategy, priorities must be set.

In many cases, determining which institutions should be given priority in the assessment process will depend on factors individual to the country involved. Those factors may vary over time, particularly if the strategy is relatively successful. Indeed, periodic reassessment may show that institutions have progressed from being part of the problem of corruption to becoming part of the solution. Alternatively, the assessments may raise warnings that previously corruption-free institutions are coming under pressure from corrupt influences displaced from areas where anti-corruption efforts have been successful. In assessing the roles to be played by various institutions, therefore, it is important to consider their existing or potential roles in the major areas, (social, political, economic, legal and other), in which anti-corruption efforts are generally required. In most countries, that will include the following areas:

Assessment

Reliable assessment, as set out in Tool #1 and Tool #2, will be needed at the beginning of and at various points during the anti-corruption process. Those

public and private sector institutions that gather statistical and other information from original sources will need to be involved, as well as those that compile and analyse information obtained from other sources. Where the assessment suggests that such institutions are unreliable, the establishment of specific, dedicated agencies may be necessary.

Prevention

Many institutions can be called upon to play a role in corruption prevention. Some elements of the criminal justice system can be classified as preventive, for example, those handling prosecutions and those charged with imprisoning or removing from office individuals convicted of corruption. More generally, institutions such as schools, universities and religious institutions, can play a role in awareness-raising and mobilizing moral and utilitarian arguments against corruption. Social and economic institutions can play a similar role, as well as developing and implementing institutional, structural and cultural measures to combat corruption in their own dealings.

Reaction

Reactive roles are generally those assigned to the criminal justice system and to institutions with parallel or analogous civil functions, in other words any institution charged with detecting, investigating, prosecuting and punishing corruption and recovering the corrupt proceeds. In many countries, non-criminal justice institutions deal with matters such as the setting of integrity and other relevant standards, the discharge or discipline of those who fail to meet them and the recovery of proceeds or damages through civil litigation.

In general, assessment and reforms will, as a matter of priority, focus on public sector institutions and their functions. The nature of corruption, however, and the reluctance of populations to fully trust public officials and institutions in environments where corruption is a serious problem will provide elements of civil society with an important role in monitoring public affairs and anti-corruption efforts and in providing accurate and credible information to validate (or invalidate) those efforts.

A similar process of assessment in respect of the relevant civil society elements or institutions should therefore be undertaken with particular focus on the media, academia, professional bodies and other relevant interest groups. The assessment of each element will usually include consideration of what roles it is already playing or could be playing in efforts against corruption, its capacity to fulfill that role, and the relationship between each element and other elements of Government and civil society.

Consideration of the media, for example, may include an assessment of the types of media present (computer networks video, radio, print media) and their availability to various segments of the society (literacy rates, access to radios, televisions and computers); the role being played by each medium in identifying corruption; the capacity of each to expand that role; as well as other relevant factors, such as the ability of the media to gain access to the information needed to review and assess Government activities.

The institutions or agencies that perform one or more of these functions will usually include the following:

- **Political institutions**, such as political parties (whether in power or not), and the partisan political elements of Government;
- **Legislative institutions**, including elements of the legislature and public service that develop, adopt or enact and implement constitutional, statutory, regulatory and other rules or standards of a legislative nature;
- **Judicial institutions**, including judges at all levels, quasi-judicial officials and those who provide input or support to judicial proceedings, such as prosecutors and other lawyers, court officers, witnesses, law enforcement and other investigative personnel;
- **Criminal justice institutions**, including those responsible for investigation, prosecution, punishment and assessment of crime;
- Other **institutions with specific anti-corruption responsibilities**, such as auditors, inspectors and ombudsmen;
- **Civil society institutions**, in particular those involved in transparency, such as the media; in the setting of standards, such as professional bodies; and in assessment or analysis, such as academic institutions; and,
- **Private sector institutions**, in particular those identified as susceptible to corruption, such as Government contractors, and those who provide oversight, such as private auditors.

Assessment of institutions and institutional relationships.

Once specific institutions have been identified, they should be assessed both individually and in the context of their relationships with other institutions and relevant extrinsic factors. The overall assessment of the potential role of judges, for example, may be affected not only by their degree of professional competence and freedom from corruption but also by the competence and integrity of prosecutors and court personnel. The nature of the legislation judges will have to apply in corruption cases will also affect the role they play.

The primary purpose of assessment using Tool #2 is to determine the potential capacity of each institution to act against corruption. Inevitably, however, that will be linked to the assessment, using Tool #1, of the nature and extent of corruption within the institution and linked entities. Judges cannot be relied upon to combat corruption if they themselves, or those they depend upon, such as court officials or prosecutors, are corrupt. In such cases, a finding using Tool #1 that corruption is present in an institution would normally suggest that reform of that institution should be a priority. Until reforms are in place, the potential of the institution to combat corruption elsewhere will be relatively limited.

The major objectives of institutional assessment include the following:

- The drawing up, within each institution, of an analysis of strengths and weaknesses to form the basis of a strategy and action plan for anti-corruption efforts within the institution. The individual plans, thus elaborated, can be compared and harmonized across the full range of institutions.

- Within each institution, identification of specific areas of corruption and/or areas at risk of corruption.
- Development of a complete inventory of institutions and agencies. The inventory would include a brief outline of the establishment and mandate of each institution and the responsibilities each has in corruption-related efforts. It would be used to make institutions aware of their mutual existence and roles which, in turn, would facilitate cooperation and coordination of mandates and activities.
- An assessment of the mandates and activities of each institution to identify and to address gaps or inconsistencies. Consideration could then be given to enhancing mandates or resources in areas identified as weak or under-resourced.

Methods of gathering data or information for use in assessing institutions

The data-collection methodology for assessing the potential roles of institutions is essentially the same as that used for assessing the extent of corruption (Tool #1), and many of the same caveats apply.

To obtain an accurate assessment, information must be obtained from a diversity of sources and methods to allow biases or errors, due to falsification, sampling or other factors, to be identified and either taken into account or eliminated. As institutions rather than individuals are being assessed, there may be a greater reliance on subjective assessments of whether an institution is functioning effectively or not, for example, the opinions of those served by the institution, those who work in it or other interested parties. The required procedural mechanisms, for example that statistics or other records be kept or specific incidents or occurrences reported, can be incorporated into institutional rules. In many cases, such a requirement amounts to asking the institution to compile and assess data about itself. Thus safeguards against manipulation or falsification may be required in some cases.

As with Tool #1, it is important to survey representative samples of the population, as the nature of the sample is a major factor in assessing the survey results. For example, a general public survey may show that only a small part of the population has experienced public sector corruption, while a sample selected from people who have had contact with the Government or particular facets of Government, such as employment or contracting, may produce a different result. Results of samples from within Government may also differ those based on outsiders.

The comparison of data taken from different samples is a valuable element of research but such comparisons can be valid only if the samples were correctly selected and identified in the first place. For general public surveys, care must be taken to sample all sectors of the population. A common error is to oversample urban areas, where people are more accessible at a lower cost, and to undersample rural or remote populations. Valid results will not be yielded if the reality or perception of corruption is different in urban and rural areas. Samples selected more narrowly, for example by asking the users to comment on a particular service, must also ensure that a full range of service-users is approached. Anonymity and confidentiality are also important; corrupt officials will not provide information if they fear disciplinary or criminal

sanctions, and many victims may also fear retaliation if they provide information.

The formulation of survey instruments is also critical. Questions must be drafted in a way that can be understood by all of those to be surveyed, regardless of background or educational level, and that will be understood in the same way by all survey respondents. In cases where many respondents are illiterate or deemed unlikely to respond to a written questionnaire, telephone or personal interviews are often used and, in such cases, it is essential to train interviewers to ensure that all are asking the same questions using the same terminology. The main techniques for gathering information include the following.

Desk Review.

An early step is usually to gather as much data as possible from pre-existing sources: previous research or assessments by academics, interest groups, public officials, auditors-general or ombudsmen, as well as information from media reports.

Surveys.

Surveys gather information from responses to written questionnaires or verbal interviews. They may be directed at general populations or be samples specifically chosen for comparison with other samples. They may gather objective data (for example, the nature or frequency of occurrences of corruption known to the respondent) or subjective data (the views, perceptions or opinions of respondents). A wide range of data can be obtained about the types, nature, extent and locations of corruption, the effectiveness of efforts against it and the public perceptions of all of those. Considerable expertise is needed, however, to gather valid data and to interpret them correctly.

When conducting a survey, it is important to choose representative samples of the population as the nature of the sample is a major factor in assessing the survey results. Where a particular institution is assessed, those surveyed must be selected on the basis of having information that is being sought about the institution. In many cases, questions or doubts may arise about the size of the sample and possible inherent bias factors. The smaller the number of people with the requisite information, the less reliable the sample becomes, and the easier it is for the results to be influenced or biased by extrinsic factors unrelated to the assessment. For example, if four persons convicted of homicide by a particular judge in a given year have a negative opinion of the judge, that may have more to do with the fact of their conviction than with the competence of the judge. If a large number of offenders convicted over a long period of time make allegations of corruption, and the allegations are corroborated by survey results from other groups, such as accused offenders who were acquitted, defence lawyers and prosecutors, a much more reliable indicator of what actually occurred would be provided.

The comparison of data taken from different samples is one valuable element of such research but comparisons can be valid only if the samples were correctly selected and identified in the first place. For surveys used to compare institutions, care must be taken to sample similar or equivalent sectors of the population for each institution. The two most common groups

will be those who work within each institution and those served by it, but other interested parties may also be surveyed where available. Samples of the users of a particular service must also ensure that a full range of service users is approached. Anonymity and confidentiality are also important: corrupt officials will not provide information if they fear disciplinary or criminal sanctions, and many victims may also fear retaliation if they provide information.

The formulation of survey instruments is critical. Questions must be drafted in a way that can be understood by all those to be surveyed, regardless of background or educational level. The question must be understood in the same way by all survey respondents. In cases where many respondents are illiterate or deemed unlikely to respond to a written questionnaire, telephone or personal interviews are often used. In such cases, it is essential to train interviewers to ensure that they all ask the same questions using the same terminology.

Focus Groups.

Another diagnostic technique used in country assessments is the use of focus groups, whereby targeted interest groups in government and society hold in-depth discussion sessions. This technique generally produces qualitative rather than quantitative assessments, including detailed information concerning views on corruption, precipitating causes and valuable ideas on how the institutions concerned can fight it. Specific agendas for focus groups can be set in advance, which allows more direct comparison of the results from a series of groups, or developed individually, either as the group starts its work or by advance consultation with the participants.

Case Studies.

Case studies involve the close examination of actual or typical cases of corruption, and are therefore more useful in surveying the nature and extent of corruption (see Tool #1) than the real or potential capabilities of institutions to combat it. Finished case studies are, however, useful tools in conjunction with other methods, such as focus groups, to illustrate to participants the true nature of corruption and stimulate creative discussion and ideas about how they and the institutions they represent could contribute anti-corruption efforts.

Field observation.

Field observation is also primarily used to assess the nature and extent of corruption (see Tool #1). It can also be used to assess institutional capability, as long as trained observers are used. The observers can be used to present problems calculated to test such matters as the knowledge and resourcefulness of officials or the adequacy of technical facilities. In extreme situations, this can become "integrity testing", in which officials are offered corrupt opportunities to ascertain whether they will accept corrupt practice; in such cases, however, the purpose would be to assess the overall quality of

the institution rather than identify and prosecute or discipline corrupt individuals⁵⁴

In many cases, it can be difficult to distinguish between the use of observers, whose function is simply to gather data for research purposes, and investigative operations, the function of which is to identify wrongdoers and gather the evidence needed for prosecution or discipline. That is particularly true where the observers are covert or anonymous, which will often be the case to ensure that their presence does not influence the conduct they are observing. Officials working in countries where constitutional or legal constraints apply to criminal investigations should bear in mind that constraints may apply to covert or anonymous observation or may operate to prevent the use of information so obtained against offenders in any subsequent prosecution. Observers should also be given appropriate rules or guidelines governing whether or when to notify law enforcement agencies if serious wrongdoing is observed.

Professional assessment of legal and other provisions and procedures.

Most countries already have criminal and administrative law provisions intended to prevent, deter or control corruption. They range from criminal offences to professional codes of conduct or standards of practice. They are not "institutions", per se, but will often need to be assessed where they are the product of institutions, for example, the laws made by a particular legislature or regulatory body, or where substantive laws, procedural laws and institutional practices are so closely linked as to make combined assessment necessary.

Thus, an assessment of the courts would have to include an assessment of the legal procedures for establishing courts, appointing judges and day-to-day court administration. It would also usually include a review of the laws establishing criminal procedure and, to the extent that they are used to identify and seek redress for corruption, both civil procedure and administrative law rules. Apart from law-making and law enforcement rules and institutions, the external or self-regulatory elements of some key professions, such as those governing the practice of law and accounting, should be evaluated, as should the codes of conduct governing other professions, insofar as they deal with corruption and allied areas.

From a legislative standpoint, the entire legal anti-corruption framework should be assessed, requiring an initial consideration of which laws could or might be used against corruption and how. Such an assessment will include:

- Criminal laws including the relevant offences; elements of criminal procedure; laws governing the liability of public officials, and as well as laws governing the tracing and seizure of the proceeds of corruption and, where applicable, other property used in connection with such offences;
- Elements treated as regulatory or administrative law by most countries, including relevant public service standards and practices and

⁵⁴ Integrity testing is an effective way to determine whether targeted individuals are corrupt, but raises some concerns about selectivity and potential abuses of power, as well as legal concerns about entrapment in systems where this imposes a limit on investigation or prosecution. For details, see "Integrity testing", Tool #30.

regulations governing key functions, such as the operation of the financial services sector (for example, banking and the public trading of stocks, securities and commodities), the employment of public servants and the making of Government contracts for goods and services; and

- Other areas of law, including legislation governing court procedures and the substantive and procedural rules governing the use of civil litigation as a means of seeking redress for malfeasance or negligence attributable to corruption.

Any area of professional practice governed by established rules, whether enacted by the State or adopted by the profession itself, may also be open to internal or external review. Critical areas include the legal and accounting professions and subgroups, such as judges and prosecutors; but other self-governing professional or quasi-professional bodies may also be worth examining. It should be noted that the primary purpose of such examination is not necessarily to identify corruption but to assess what measures have been developed against corruption, so that they can be used as the basis of reforms for other professions, or to identify and deal with inconsistencies or gaps.

There should be a review of specific laws against corruption, as well as of institutions and anti-corruption measures taken by them, so that a complete institutional inventory can be compiled. The inventory can be used as follows:

- To comprehensively review legislation in order to identify provisions that can be used effectively as part of the initial anti-corruption strategy, as well as areas of deficiency requiring amendment or the addition of new measures. International legal instruments and the model laws and practices of other countries may provide assistance in identifying deficiencies and suggesting areas and methods of law reform.
- To assess each institution or sector individually against the inventory. If the institution lacks anti-corruption elements that are present in other sectors, a decision can be taken as to whether those “new” elements should be taken on board.
- To allow parallel or similar rules adopted by different institutions to be compared and the most effective identified. That will assist in advising improvements to other institutions.
- Once the anti-corruption measures of an institution have been identified, surveys of their “clients” can take place to ascertain if the measures have been effective and, if not, why not.
- Gaps and inconsistencies in anti-corruption measures can be identified and reconciled or closed.