
19 Anti-corruption authorities: an effective tool to curb corruption?¹

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1. Introduction

Fighting corruption has become a policy priority for the international development community over the past two decades. Tens of millions of dollars have been spent both multilaterally and bilaterally to understand and address the causes of corruption and poor governance. Extensive reform efforts aimed at reducing and preventing corruption have been launched. The first wave of anti-corruption reforms promoted a narrowly defined approach of ‘fighting corruption by fighting corruption’ – launching ad hoc anti-corruption initiatives and focusing on the introduction of anti-corruption laws and regulations (Kaufmann, 2005). This approach, in part because it neglected to address the more fundamental and systematic governance reforms needed in many countries, failed to show significant progress in addressing corruption and forced governments and practitioners to rethink their approach to anti-corruption. The most recent wave of anti-corruption reforms builds on the idea that corruption is a dysfunction of public administration and emerges in the presence of monopoly and discretion, which in turn can be curbed by increasing (public officials’) accountability and (government’s) transparency (Klitgaard, 1988). Thus, reforms have focused on broadly strengthening country institutions, from general public sector reforms (in the areas of public procurement, civil servant management, and revenue administration) to specific initiatives targeted at promoting voice and accountability at the local level by increasing citizens’ access to information and transparency.

As part of the first reform wave, practitioners suggested the creation of centralized anti-corruption authorities (ACAs)² as a policy tool to address corruption more effectively at the country level. The rationale behind such policy advice was that, as corruption grows more sophisticated in character and method, conventional law enforcement agencies become less able to detect and prosecute complex corruption cases and to carry out prevention activities. As a result, since the 1990s, more than 30 countries have established some form of ACA as a key strategy in their effort to fight corruption. International agreements and standards on fighting corruption have generally supported this approach, often calling for the creation of

such institutions. However, almost two decades later, ACAs are struggling to show a clear and significant impact on corruption and are generally not regarded as an effective policy tool in the fight against corruption.³

These institutions, however, exist and operate in many countries. The question then becomes what makes ACAs an effective policy tool to address corruption, or, conversely, what are the factors that may help reinforce the ability of ACAs to resist efforts to undercut its effectiveness? A range of comparative studies have begun to provide the foundations for a more comprehensive framework to review ACA effectiveness, accountability, and impact.⁴ This chapter starts where these studies left off by providing new cross-country evidence of the challenges and experiences of ACAs and by making some initial policy recommendations. Its objective is to take a fresh look to the issue of ACA effectiveness and to promote further understanding based on a more systematic analysis of a wide range of context-specific cases.

This work is based on a new initiative launched by the World Bank in late 2009 in collaboration with the United Nations Office on Drugs and Crime (UNODC), the US State Department, and the European Commission. Its objective is to gather more systematic data and information from ACA personnel and practitioners on how to better measure the performance of these agencies. For this purpose, the World Bank, with the support of its international partners, hosted a two-day workshop exploring ACAs on March 24–25, 2010, which brought together 32 participants from 17 countries. As a follow-up to this event the World Bank undertook the collection of basic information about ACAs. About 50 ACAs have responded and completed a short survey. To complement this cross-country data, the World Bank also carried out seven in-depth case studies of selected ACAs in Africa, Asia, and Eastern Europe. The data collected through this initiative form the basis of this chapter. These data provide new and more detailed evidence of the complexity of these institutions and the variety of factors that can affect their effectiveness. ACAs can take many forms and display quite different functions and mandates. This institutional variation makes it difficult (and sometime meaningless) to compare experiences and ‘replicate’ successful models in other countries. Furthermore, there is a tension among practitioners when it comes to the key functions of ACAs: should they focus on only one set of functions, for example prevention rather than prosecution, or should they encompass several different functions requiring different types of expertise? Organizational theory suggests that public agencies with simple and well-defined mandates are more likely to succeed. In our sample, effective ACAs include both single- and multi-function agencies, suggesting that there is not a simple relationship between a narrowly defined mandate

and ACA performance, but rather that ACAs effectiveness depends on a multiplicity of interacting factors.

Strong political support from the country leadership emerges in our sample as the cornerstone of significant anti-corruption efforts and ACA effectiveness. As practitioners have long recognized, without clear commitment and support from the top leadership, anti-corruption efforts are short-lived and often doomed to fail. But, according to several of the ACAs interviewed, support from the top leadership is a necessary but not a sufficient condition. In order to promote change, middle management needs to work for change as well. Thus, not only the president but also ministers and directors of public agencies need to support the ACA's work. This observation calls for a new approach to anti-corruption reforms, one that seeks to change the incentives of middle management so that they act to improve transparency and promote accountability as part of a strong commitment to the reform process.

Once political support is obtained, the next step is the introduction of a comprehensive and clear legal framework for anti-corruption work. Such a legal framework, although necessary, is not sufficient, and laws and regulations need to be applied to make a difference. Furthermore, inter-agency coordination and cooperation among different jurisdictions are required to enhance the investigative capacity (and effectiveness) of ACAs. Finally, adequate resources and a clear role and position within the country's institutional system can determine whether an ACA will be able to make significant progress in the fight against corruption. Ad hoc and impulsive policy responses driven by dramatic corruption scandals, paired with political economic conflicts within the country, have contributed to the emergence of underfunded ACAs that often have multiple and poorly defined functions and operate in an unclear legal environment.

Other, less often emphasized factors also affect the effectiveness of ACAs. The existence of a broad public sector reform plan and an independent, multi-year budget can help sustain ACA efforts. Citizens and the media (including the emerging social media) are powerful tools that can create an enabling environment for ACAs when facing faltering political support. Investing in programs to establish good relationships and communication with the public has helped several ACAs to fend off political pressures and survive attacks aimed at undermining ACAs. Clear and comprehensive performance indicators, however, are often unfamiliar concepts to ACA officials. This makes the ACAs unable fully and regularly to highlight progress and achievements, making them more vulnerable to the fluctuations introduced by political campaigns and elections.

Existing global standards and agreements, although often defining the reform space in which ACAs operate, should be leveraged to promote

country reforms (and reform of the ACA itself) that will increase the impact of ACAs' efforts. The current review process of the United Nations Convention against Corruption (UNCAC) provides a window of opportunity to revise the structure of some of these bodies and to promote a new wave of anti-corruption efforts at the country level. Finally, an additional factor – often underestimated – is the role of the donor community and the bias donors may introduce in a country's system. ACAs often depend on international support and resources for their functioning, especially in developing countries, weakening the credibility of anti-corruption efforts at the country level and introducing a short-term bias in the anti-corruption reform process as the ACAs struggle to maintain annual funding from donors and have an impact in the short run.

Three policy lessons emerge from our study. Given the variation observed among ACAs and their institutional and political environments, policy makers should exercise caution when they attempt to 'replicate successful experiences', and they should do so only after carefully understanding and integrating country-specific factors in the approach. Furthermore, countries should set out a comprehensive and clear set of performance indicators in the beginning to guide performance and to capture the impact of ACA activities, beyond the number of cases investigated and/or prosecuted. Only in this way will policy makers, citizens, and donors be able to appreciate and evaluate in a more meaningful and objective way the effectiveness of ACAs over time. In addition, donors should work in partnership with ACAs and promote a medium-term view, focused on building local capacity and promoting the sustainability of anti-corruption efforts within the country. Where possible, donors should coordinate anti-corruption efforts to avoid duplication and the waste of resources, because this can negatively affect ACAs.

Finally, the results discussed here, although complementing the existing empirical literature on this topic, call for further analytical work based on a broader set of countries. The sample used in this chapter is slightly skewed toward the African continent, with a limited representation of agencies from the Middle East. Given the variety observed across ACAs, more data are clearly needed for sound policy recommendations.

The chapter is structured as follows. Section 2 provides a brief overview of the existing international standards and agreements that may affect the structure and the functioning of ACAs. Section 3 summarizes the most recent literature on ACAs. Section 4 discusses the methodology used to gather the information and data presented in this chapter. The following sections discuss different factors, both internal and external, that may affect the effectiveness of an ACA. Sections 5 and 6 focus on the institutional structure of ACAs, discussing the functions and mandates that these

institutions can have and how they can fit within the broader institutional environment of a country. Section 7 discusses the issue of resources, both human and financial, and how these can affect the functioning of an ACA. Section 8 looks at the importance of independence for a well-functioning ACA and linked it to the accountability and oversight of an ACA's performance. Section 9 summarizes the findings of the analysis and proposes areas for further work.

2. Brief overview of international standards

Though ACAs were first introduced in the aftermath of the Second World War, most were created following a wave of scandals in the late 1980s and early 1990s.⁵ The increased focus by international organizations on the link between effective institutions, corruption, and growth led to a mushrooming of international agreements in the 1990s focused on anti-corruption activities and bodies. The first international agreement to recommend the creation of ACAs was the OAS Inter-American Convention Against Corruption (IACAC) adopted in 1996. In Article III, Part 9 the IACAC asks states to consider:

9. Oversight bodies with a view to implementing modern mechanisms for preventing, detecting, punishing and eradicating corrupt acts.

In 2001, the Southern African Development Community (SADC) adopted the Protocol Against Corruption that sets out in Article 4:

- 4 . . . an obligation to create, maintain and strengthen institutions responsible for implementing mechanisms for preventing, detecting, punishing and eradicating corruption.

This was followed by the African Union Convention on Preventing and Combating Corruption, adopted in July 2003 (which, however, has not yet come into force).⁶ Despite the variety of regional instruments that has emerged since 1996, the UNCAC – adopted in 2003 and ratified by more than 130 countries⁷ is the most extensive one. First, Article V, UNCAC requires ratifying states to:

1. . . . 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. . . . 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. . . . 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.

Second, the UNCAC adds to the responsibilities of these ACAs in Article 36:

Each State Party shall . . . ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.

When drafted, the UNCAC reflected the prevailing wisdom that specialized ACAs could be the optimal mean to address rampant corruption (Pope, 1999; Doig, 1995 and 2009; Quah, 2010). Because of the broad focus of these international agreements, many of the new agencies encompassed a wide range of not fully defined functions, but they often functioned with limited resources and capacity and in an uncertain political environment.

ACAs in European countries, though subject to the same approach ('fight corruption by fighting corruption'), were influenced by other factors. In the late 1990s, anti-corruption measures began to be introduced in countries that are geographically located within the official boundaries of Europe under the pressure of international organizations such as the Council of Europe, the OECD, the World Bank and most of all, the European Union. The EU Commission proposed principles for improving the fight against corruption for EU candidate countries and other third countries; requirements included the development and implementation of national anti-corruption strategies or programs covering both preventive and repressive measures; the ratification of relevant international instruments (UN, Council of Europe, and OECD Conventions); the creation of competent and visible anti-corruption bodies; the development of investigative techniques and indicators (UNDP, 2010). Candidate states under the political pressure of the European Commission, eager to join the EU, implemented numerous legislative anti-corruption measures. As a consequence the Baltic countries, as well as other new EU members in Central Europe, established many ACAs between the late 1990s and the mid-2000s.

3. Acas' experiences and evaluation – a review of the literature

Since the establishment of these international standards, a few normative and empirical studies have argued that ACAs have had limited impact, if any at all, and are therefore not worth the investment that has been made by the donor community (Meagher, 2005; UNDP, 2005; Hussmann and Penailillo, 2007). As one survey respondent argued, the problem seems to be that most of these authorities 'don't have effective legal standing, independence and separate budget and/or hiring authority'. Such conditions undermine the effectiveness and impact of these institutions. ACAs also face challenges of limited technical staff, overly-broad mandates, balancing prevention and prosecution, and unclear statutory or regulatory authority. As a result, some experts have begun to question the ability of ACAs to address corruption (UNDP, 2005).

Practitioners have increasingly focused on factors that can help to identify the possible reasons for the limited impact of ACAs, mostly relying on the experience of a few well-known cases (De Speville, 2000 and 2010; Meagher, 2005; Quah, 2010). The moment of establishment is of critical importance and can determine whether the agency is ultimately a 'success' or a 'failure' (Meagher, 2005). In setting up a specialized anti-corruption body, policy makers must clearly specify institutional arrangements, jurisdiction, mandates, and reporting structures. Governments sometimes employ 'successful models' or draw upon 'best practices' without sufficient consideration of the broader institutional, political, and cultural contexts in which they are supposed to operate (de Sousa, 2009 and 2010). Expectations for rapid and visible results are high, and the ACA staff and leader are pressured to quickly address systemic corruption involving high level public officials in a manner that meets international prosecutorial standards (Doig et al., 2007). This often translates into a loss of political support, partial investigations, and a change of the top management of the ACA.

Under ideal conditions, an ACA should be established as part of a national anti-corruption strategy, with clear planning, prioritized expectations, and strong political support, regardless of future outcomes (Meagher, 2005). In practice, however, institutionalizing anti-corruption functions can be influenced by stakeholders with a direct interest in the outcome, leading to disagreements and competition over designing the agency. As suggested by international standards, specialized anti-corruption enforcement bodies 'places a number of key capabilities, responsibilities, and resources under one roof – thereby creating a powerful centralized agency able to lead a sweeping effort against corruption' (ibid.: 7.2). Thus, aggregating anti-corruption functions under one strong ACA may be efficient, but creates a highly competitive environment where

many actors – and not just the government – try to influence inputs, outputs, and outcomes, which may or may not reflect mutual interests. To address some of these challenges, Doig (2009) suggests a business plan approach, where the authorities consider crucial external factors that will influence the ACA and, perhaps more fundamentally, identify the value added by establishing such a body.

The institutionalization of anti-corruption efforts may take many forms. OECD (2007) and de Sousa (2010) identify three well-established models: (i) stand-alone, specialized ACAs that handle a broad range of functions; (ii) ACA departments within national police forces or other judicial bodies; or (iii) ad hoc agencies that focus purely on prevention and education. Once a country expresses an interest in creating an anti-corruption body, donors are often eager to engage and provide technical support and funding. This is where ACAs face fundamental institutional challenges that can ultimately undermine their effectiveness. Adequate resources, the institution's relation with other government agencies and political interference (both within the country and internationally) are key issues that need to be addressed when establishing a new ACA or when restructuring an existing one (Doig et al., 2007).

ACAs cover a broad range of functions (Meagher, 2005; Doig et al., 2007; OECD, 2007; de Sousa, 2009). In general, primary functions include (i) prevention, (ii) education and awareness raising, (iii) investigation and prosecution, (iv) coordination, and (v) monitoring and research. The mix of functions varies from country to country. A comprehensive analysis of five African ACAs (Ghana, Malawi, Tanzania, Uganda, and Zambia) underscores that even similar country contexts can result in vastly different institutional design (Doig et al., 2005).

Not only do these agencies vary in function, but their size, resources, and reporting arrangements can also be quite different and these can affect greatly ACAs' effectiveness. The staff must be competent in techniques to fulfill the agency's mission, should be subjected to the same level of integrity scrutiny as those whom they investigate (if not more so), and must have a high degree of professionalism (Meagher, 2005). Sufficient funding, as will be discussed in more detail below, is a key factor – not only to ensure that resources are available to pursue cases and promote prevention, but also as a signal of political support (Doig et al., 2007).

With respect to staff responsibilities, however, the agencies must be realistic. High staff morale – which can be bolstered by adequate resourcing and sustained political support – is important in achieving results (de Sousa, 2009). Good morale, however, is little more than potential energy without effective management structures to initiate and oversee operations. The level of technical, bureaucratic, and managerial responsibilities

must be properly balanced so that investigators can investigate, managers can make decisions about the direction and operation of the agency, and policy advisers can assist government with implementing prevention strategies. This can best be achieved through staff performance agreements and work programs that are clear and specific.

Crucial to agency-wide success are the safeguards that balance independent decision making against public accountability. De Sousa (*ibid.*) suggests that ACAs need operational autonomy – the capacity to carry out the agency’s mission and objectives – to be effective. But ACAs should not be immune from scrutiny or regulation; they must have oversight and be responsive to the constituents they are charged with serving. Effective ACAs must also adhere to ‘the application of legal standards, the availability of judicial review, systems for public complaints and oversight, a requirement that the agency answer to all branches of government and the public, and expenditure accountability’ (Meagher, 2005: 92).

Though education and greater awareness can help influence public perceptions and understandings of the impact of corruption, heightened public concern does not translate easily into a detailed anti-corruption strategy (de Sousa, 2009). Anti-corruption policies are largely set by political institutions – such as elected officials and political parties – and the desire to pursue an anti-corruption strategy, as noted above, is mostly driven by events that place corruption in the public consciousness. If corruption is systemic and pervasive, it is easily co-opted into the status quo, and accepted (Lawson, 2009).

In the end, to better understand ACAs and to evaluate their performance remain a challenge. A limited body of work has focused on case studies of individual ACAs (Klitgaard, 1988; de Speville, 2000). Although rich in details and history, these country-specific studies often have limited utility for policy making. A few others have focused on countries in the same region (Doig et al., 2005; Meagher, 2005; Quah, 2010) in an attempt to identify a set of policy recommendations that could be used by other countries, but they are similarly difficult to generalize.

Doig et al. (2005 and 2007) offer an innovative ‘phased approach’ to evaluate the effectiveness of an ACA that is primarily qualitative and includes five dimensions:

- *Development* Is the organization mature and stable in the delivery of its objectives?
- *Strategy* Is the organization delivering its objectives in terms of competences and capacity?
- *Measurement* What metrics does the organization use to track its own progress, and are they tied to outputs or outcomes?

- *Continuity and consistency* Is resourcing for organizational, management, and operational expertise used incrementally or on a medium-to-long term basis through an agreed business plan?
- *Context* What are the positive and negative factors existent in the ACC's operating environment?

This approach, although novel and pragmatic, is not without its limitation. By its nature, it seeks to understand how an ACA develops as an institution and does not offer comparable and easily collectable indicators by which to assess outputs and impact. OECD (2007) emphasizes that a methodology to evaluate the performance of ACAs should be country and institution specific, and that it should include both quantitative and qualitative indicators, capturing the impact of all the functions of the ACA. These data should, however, be reviewed with a dose of healthy skepticism, and should be complemented by monitoring evaluations carried out by international bodies, such as the Council of Europe Group of States against Corruption (GRECO), UNODC and the OECD.

4. Data and methodology

This chapter tries to overcome some of the limitations of previous works by focusing on a larger and more diverse group of countries and experiences. This is possible thanks to an ongoing initiative⁸ aimed at assessing ACAs' effectiveness launched by the World Bank in collaboration with the US State Department, the European Commission and the UNODC. The purpose of this initiative is to gather more systematic data and information from ACA personnel to better understand the institutional structure of individual ACAs in an attempt to support their efforts more effectively in the future. This initiative also provides important information on the form and the structure of ACAs that will be shared with all the ACAs participating in the exercise.

As part of this initiative, the World Bank has developed a short survey aimed at capturing the institutional structure and the experiences of the ACAs responsible for the implementation of some aspect of the UNCAC. The survey took inspiration from the work and analysis carried out by Doig et al. in 2005, focused on five African countries. As of December 2010, 50 countries have submitted complete surveys. Table 19.1 lists the countries and the date of the ACA's establishment.⁹

The survey data are complemented with seven in-depth case studies based on long interviews with ACA representatives (Rwanda, Ethiopia, Slovenia, Mongolia, Indonesia, Philippines, and Tanzania). The case studies allow the gathering of more detailed information on the challenges faced by ACAs and the progress made so far. The information gathered

Table 19.1 *Summary of ACAs interviewed*

Regional distribution	Number of agencies	Percentage
Africa	16	32
South Asia	7	14
East Asia	6	12
Middle East and North Africa	2	4
Latin America and the Caribbean	8	16
Europe	11	22
Total	50	

will be made available on a newly launched website accessible to ACA officials and governance practitioners.

5. Mandate and functions of ACAs

ACAs are durable institutions¹⁰ typically mandated to reduce opportunities for corruption and to provide centralized leadership for government anti-corruption policies and strategies (Meagher, 2005; de Sousa, 2010). The functions that these bodies perform, however, vary greatly, from pure investigative functions to complex policy and coordination tasks. The core functions of an ACA can be grouped into four broad categories (OECD, 2007):¹¹ (i) investigation and prosecution, (ii) prevention, (iii) education and awareness raising, and (iv) policy, research, and coordination.

Investigation and prosecution are required for the enforcement of the anti-corruption legislation in any given country. Most countries already have institutions that focus on law enforcement. Corruption, however, is not a legal term and comprises various crimes and offenses. Thus, some countries have established agencies that specialize in investigation (and to some extent prosecution) of ‘corruption’ offenses. This has led to the challenge of defining the jurisdiction of these bodies (both in terms of the type of offense and the time of occurrence) to avoid conflict with other law-enforcement agencies and promote coordination. Among the several types of law-enforcement ACAs, a particularly interesting model is the Romanian National Anti-corruption Directorate (NAD). The NAD is created by law and has legal personality and a certain degree of independence. It operates within the framework of the Prosecutor’s Office attached to the High Court of Cassation and Justice. The NAD is responsible for the prosecution and investigation of corruption cases. In 2009, it handled 4,866 cases, which is relatively high compared to other ACAs.

Prevention is the second set of functions that these agencies are required to perform. This term encompasses a diverse and broad set of

functions, from prevention of conflict of interest, to asset declaration, the ethics of civil servants, and prevention of money laundering, to name just a few. To perform these functions these newly established bodies often need to rely on and coordinate with ombudsmen, ethics commissions, and audit institutions. Related to this set of functions is a third group of tasks, education and awareness raising, which also includes liaison functions with civil society, the media, businesses, and the donor community in developing countries. These tasks, key for the medium/long-term sustainability of the ACAs' work, are often not considered a priority and are left as residual activities especially when under tight 'resource constraints'. Examples are the Commissions on Corruption Prevention of Slovenia, the FYR of Macedonia and the Office of the Comptroller General (CGU) of Brazil.

The CGU is an example of an ACA that has been successful in designing and implementing several initiatives aimed at raising awareness and preventing corruption since its establishment in 2001:

1. *Public Spending Observatory (ODP)* A data-matching and tracking system designed to detect fraud and corruption. Established in 2008, the ODP combines the knowledge and experience of auditors with the use of advanced tools of information technology to process a large volume of data. The ODP regularly provides CGU and other government agencies with reports about the quantity and quality of public spending and identifies areas of public spending sensitive to corruption risk.
2. *Transparency portals* Aimed at providing information on resources used by federal bodies, federal resources transferred to local governments and transactions on the federal government's Payment card.
3. *National Debarment List* Web portal that includes firms currently debarred and temporarily suspended by the government.
4. *Education for ethics and citizenship* Now included in the national school curriculum.
5. *Eagle Eye on the Public Money Program* Includes courses in: internal control; social control; social control of the government education program; and public procurement and contracts. From 2004 to 2009 this virtual program has trained: 7,176 public officials, 8,305 counselors, 8,652 municipal leader, 8,709 teachers and students, and 586 municipalities.

The final set of functions is policy development and interagency coordination. These functions are necessary for the design, implementation, and monitoring of a comprehensive anti-corruption strategy, which often

requires collaboration and joint efforts of different institutions within a country.¹² These coordinating functions are critical in order to perform successfully the functions described above, from prevention to investigation and prosecution.

In practice, there are two essential questions to ask when establishing ACAs: (i) what functions does the state seek to pursue, and (ii) how much institutionalization is needed to meet the demand for anti-corruption work? The scope of work undertaken by ACAs can determine how well they perform and the extent of their impact, but best-practice examples to guide policy makers are limited. An ACA 'need[s] to be strategic in defining its focus . . . [n]o agency can cope with an unlimited mandate; choices must be made' (Meagher, 2005: 90).⁷

A review of the literature on ACAs indicates that there is no standard approach or model when it comes to the establishment of an ACA and the definition of its mandate (Meagher, 2005; Doig et al., 2007, Charron, 2008; De Speville, 2008; Quah, 2008). Some ACAs have been created from scratch, while others have built on existing ombudsman offices, special units within police departments, or justice departments (Johnston, 1999; de Sousa, 2009). Regardless of their history, most ACAs have one or more of the four broad functions identified above.

The ACAs included in our study are no different (Figure 19.1). The majority of ACAs have some preventive and investigating functions, but prosecution is carried out by less than half. This variation across ACAs can be, in part, be explained by the origin of the agency itself. In some countries the model adopted when the ACA was first created was the Hong Kong and Singapore model, which includes all four functions. In others, these bodies emerged as specialized units within law enforcement institutions. The second typology is especially common among European ACAs and in Latin America.

This suggested dichotomy in terms of structure and functions is often tempered by country-specific challenges and politics. In a few cases, for example, in an attempt to possibly limit the power of the ACA, these functions are not given jointly to the same body. If the investigative and prosecution functions are not within the same body, the ACA needs to find ways to coordinate and collaborate with other agencies. The fragmentation of functions can clearly undermine the efforts and the effectiveness of the agency, especially in countries with limited coordination among institutions, a weak judiciary and pervasive high-level corruption. This is the case of the ACA in Tanzania – PCCB – which has the power to prosecute corruption offenses only with the approval of the Director of Public Prosecutions, and of the Latvia AC Bureau, the KNAB, which can only carry out pre-trial investigations.¹³

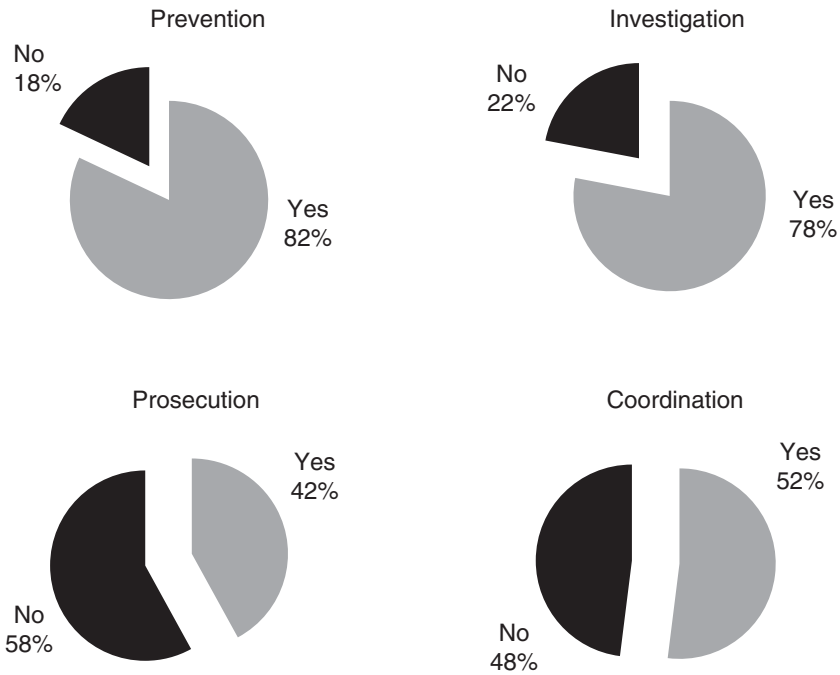


Figure 19.1 Functions of ACAs

The mandate of these agencies can evolve over time as the cases of Sierra Leone and Rwanda show. Sierra Leone’s Anti-Corruption Commission (ACC) was established in 2000 with a mandate to prevent and investigate allegations of corruption. The Commission undertook a large number of investigations, including some high-profile cases, but these did not result in successful prosecutions. Attempts to establish an independent committee to review investigations and approve prosecution cases brought by the Commission were rejected as unconstitutional. The difficulty of securing convictions in corruption cases can be attributed to a wide range of factors, no doubt exacerbated by procedural disconnects between the investigatory and prosecutorial agencies. Although the Commission gained some credibility for its investigative results, the impact of the ACC was very limited. Sierra Leone addressed some of these challenges by modifying the mandate of the ACA through a new Anti-Corruption Act in 2008. The new Act grants prosecutorial powers to the ACA and establishes a prosecutorial unit for that purpose; it increases the number of corruption offenses and establishes an Advisory Board on Corruption (made up of representatives of civil society). In 2009 the ACC handled 122

investigations. Of these, 11 cases resulted in convictions and 10 in cautions; nine cases are still pending trial; 24 were closed for lack of evidence; the remaining are ongoing. Although the Commission continues to face a variety of difficulties, the evolution of its mandate is an indication of the importance of creating an enabling institutional and procedural environment for anti-corruption efforts.

The ACA in Rwanda (Office of the Ombudsman) is experiencing a similar change in mandate. The Ombudsman is a relatively unique institution that combines the traditional prerogatives of an ombudsman with the mission of an ACA. The Ombudsman handles complaints about corruption from citizens, and administers the income and asset disclosure system of the government. Thus, it both serves as the advocate of the citizenry of Rwanda to the government and monitors agencies of the government. As such, the Ombudsman's office holds regular community meetings throughout the country to receive comments and complaints about any government service or function from citizens. In response to these comments, the Ombudsman either contacts the relevant agency to facilitate a response to the complaint, or it uses the comments to inform its recommendations to agencies for reform. The Ombudsman's office also uses these complaints to help identify potential instances of corruption and to perform preliminary investigations. The parliament recently provided the Ombudsman's office with the power of 'police judiciaire', which entitles the Office to carry out preliminary criminal investigation. This has enabled the Office to expand its mandate beyond its policy advisory function and to probe more deeply into specific instances of corruption. The Ombudsman's office is now asking to be granted full prosecutorial powers, arguing that the Prosecutor General has neither the specialized expertise to handle corruption cases, nor the interest in pursuing cases not derived through normal police channels.

The debate regarding the wisdom and efficacy of granting prosecutorial powers to the Ombudsman's office is significant. On the one hand, the Office of the Ombudsman wishes to remain as independent as possible and to have as many tools at its disposal. On the other hand, granting prosecutorial powers to the Ombudsman's office may prompt other agencies to seek similar powers. Concerns were voiced during numerous interviews for this study that providing prosecutorial powers to the Ombudsman's office could lead to a proliferation of prosecuting bodies and, therefore, could undermine the Prosecutor General's office and the development of the country's judicial system.

6. ACAs and the existing institutional structure

ACAs do not operate in an institutional vacuum and cannot successfully implement their mandates without the support of other government

agencies. Often these bodies are introduced into a nascent institutional environment and are given responsibility for the implementation of a complex and fragmented mandate, sometimes in competition with other agencies (OECD, 2007; Doig, 2009). Under such conditions, coordination and cooperation become essential for effective functioning.

The ACAs in Zambia and Nigeria in the early 2000s are an example of the potential detrimental effect of the lack of coordination among agencies. In the case of Zambia, President Mwanawasa introduced a Task Force on Anti-corruption in 2002, in part to address the limited achievements of the ACC established in 1982. The Task Force was responsible for investigating President Chiluba, a mandate already given to the ACC. The creation of a new agency, despite the existence of another one, undermined the credibility and reputation of the ACC, and did not address the issues surrounding the limited performance of the ACC. Furthermore, already scarce resources were taken from the ACC to support the activities of the Task Force. Although the Task Force made some progress in the investigation and prosecution of President Chiluba, this was only a temporary success, and it did not address the lack of effectiveness of the ACC. The Task Force was dismantled in 2009 under a new political regime.

The case of Zambia, though very telling, is quite extreme. It is, however common to observe the creation of a new ACA in an institutional environment where the anti-corruption mandate is fragmented across government agencies. As a consequence, ACAs often receive an official mandate to coordinate anti-corruption efforts across the country (see Figure 19.1).

Coordination and cooperation with other agencies are needed for the implementation of a country's anti-corruption strategy and of international standards (UNCAC, for example). Coordination can take different forms, from policy design coordination to policy implementation, operation coordination (for investigation and prosecution operations), and monitoring coordination. All these forms of coordination are necessary and require (i) a clear legal framework and (ii) institutionalized channels of cooperation with other government agencies in the areas of investigation, enforcement, financial control, and policy making. Table 19.2 illustrates this point using the experience of the Indonesian ACA, the Corruption Eradication (KPK), and describing the role of other agencies in the investigation of corruption cases.

A clear legal framework requires overall anti-corruption legislation. It also calls for laws and regulation to facilitate the investigative and prosecution functions of ACAs, such as conflict of interest legislation, freedom of information, whistleblower protection and financial disclosure. Figure 19.2 describes the legal framework for the ACAs interviewed. Although, at first, the data may be encouraging for the seemingly widespread

Table 19.2 Investigating corruption cases in Indonesia – the role of other government agencies in support of KPK

Agency	Role
Supreme Audit Board (BPK)	Provide investigated audit reports, initial data state loss
Financial Intelligence Unit (PPATK)	Provide the Suspicious Transaction to support investigation process
Banks and insurance companies	Provide financial statement to support investigation and asset tracing process
Other departments (national Land Agency, Immigration, Department of Law and Human Rights, etc.)	Provide supporting data related to the case (People Movement System, Company Profile, etc.)

Source: From interviews with KPK (March 2010).

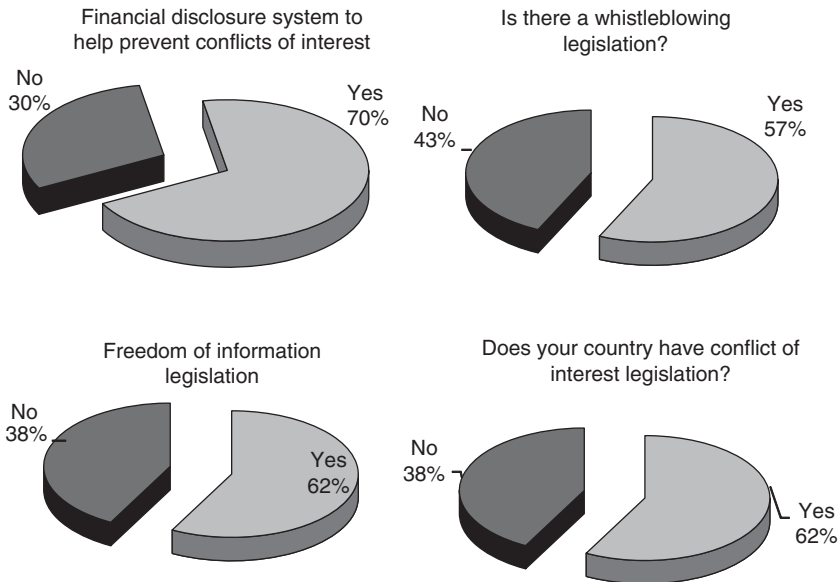


Figure 19.2 Existing legal frameworks

existence of a comprehensive legal system in support of ACA activities, it is important to stress the difference between *de jure* and *de facto*. Figure 19.2 summarizes the *de jure* system. Interviews with selected ACAs suggest that often existing laws are not applied, undermining the ACAs’ work. A

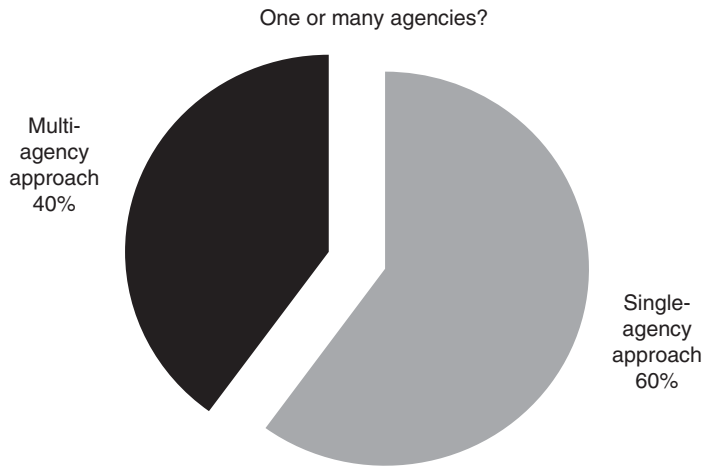


Figure 19.3 Country approach to fighting corruption

non-functioning judicial system with weak courts can also greatly weaken the capacity and effectiveness of ACAs. This issue was not covered in the survey we implemented.

The second element that facilitates coordination is institutionalized channels of cooperation with other state agencies in the areas of investigation, enforcement, financial control, and policy making. These channels can take multiple forms, from a memorandum of understanding between agencies to laws, regulations, and informal agreements. To better understand the heterogeneous experience observed among the agencies we interviewed, we consider both single- and multiple-agency approaches to the anti-corruption mandate (Figure 19.3) (Meagher, 2005; Doig et al., 2007).

The single-agency approach, most popular among newly created ACAs worldwide, is a centralized, powerful agency that focuses on anti-corruption responsibilities, but must interact with other government bodies. This approach is based on the successful experience of agencies such as the Singapore Corrupt Practices Investigation Bureau (CPIB) and the Hong Kong Independent Commission Against Corruption (ICAC). Sixty percent of the agencies interviewed use it (Latvia, Indonesia, Mauritius, South Korea). The experience of Indonesia's KPK provides an example of single-agency approach paired with success in combating corruption.

The KPK has a mandate to prevent, investigate, and prosecute corruption. For enforcement purposes it has in-house investigators, a staff of prosecutors (seconded from the Attorney General's Office), and a

dedicated Anti-Corruption Court presided over by ad hoc judges (selected and screened). This special arrangement has allowed KPK to successfully prosecute over 150 senior officials between 2003 and 2009, with 68 percent of them receiving sentences of 2–5 years, 10 percent of 5–10 years, and less than 5 percent of more than 10 years. Appeals of these decisions were upheld in the Supreme Court. In contrast to the KPK's success, Courts of General Jurisdiction in Indonesia have an almost 50 percent acquittal rate on (more minor) corruption cases brought by the Attorney General's Office. A few factors help explain KPK's success:

- KPK investigators have the authority and the capacity to gather evidence (wire-taps, bank accounts, tax statements); they also have the authority to make arrests and seize assets;
- investigators and prosecutors work closely together, and the commissioners review all cases to ensure that only those with sufficient evidence to secure a conviction are taken to trial;
- KPK also strategically chooses the cases to pursue to signal that KPK is pursuing corruption both at high levels of government, and across all sectors of public administration.

In contrast to the single-agency approach, the multi-agency approach spreads anti-corruption responsibilities among different agencies or departments. Under a multi-agency approach, the ACA may share its responsibilities with the Ombudsman Office, the Auditors General, the Comptroller General, the Commissioner for Human Rights, and the Ministry of Education. Those who favor the single-agency approach argue that government agencies that deal with corruption while simultaneously conducting their regular functions may not devote the same attention to corruption as to other items in their portfolio. The multiple-agency approach is currently used in Brazil, Argentina, Mongolia, Estonia, and Slovakia, among others.

Whether operating through single or multiple agencies, the ACA must coordinate with other government bodies for the successful implementation of its mandate. The KNAB in Latvia, the KPK in Indonesia, the Independent Authority Against Corruption (IAAC) in Mongolia, the CGU in Brazil and the Anti-corruption Czar Office in Colombia all illustrate how cooperation and coordination can and should be achieved under both approaches.

In Latvia, the existing legal framework and anti-corruption legislation have established clear links between the KNAB, enforcement agencies, and the Ministry of Finance, facilitating sharing of information for investigative and prosecution purposes. In Indonesia, information and data

are shared during the investigation of corruption crimes, as illustrated in Table 19.2. This has led to the successful investigation and sentencing of the former governor and several deputy governors of the Indonesian Central Bank for bribery (from interviews with KRK, March 2010). In Brazil, the CGU has established working partnership with 15 different government agencies, from the Police to local Prosecution Offices, Serpro (the data-processing service) and banks; this facilitates the implementation of its audit and preventive functions.

In Mongolia, the IAAC was established in 2007 as a specialized governmental authority within the parliament. Its mandate is to prevent and investigate corruption and to increase awareness. The commissioner general and deputy commissioner general are nominated by the president and approved by the parliament. The IAAC is, therefore, legally independent from the executive branch but works in close collaboration with government bodies, non-governmental organizations (NGOs) and citizens. A working group consisting of representatives of governmental organizations and the IAAC was established by the Mongolian prime minister. The operational plan of the working group stipulates the introduction and implementation of anti-corruption action plans in all governmental organizations in Mongolia. Ministries, agencies, and local governments report twice a year to the IAAC and the cabinet secretary on the implementation of their plans. The IAAC then submits reports on the implementation of the anti-corruption legislation to the parliament. In 2008, 26 organizations, adopted anti-corruption action plans. In 2009, 55 new organizations approved anti-corruption plans. The IAAC also works very closely with the Prosecutor General's office, and its investigative work and criminal case registration are subjects to the oversight of the Prosecutor General's office. The IAAC also collaborates with courts and the Prosecutor's Office by organizing training in investigative procedures and criminal procedure codes. Finally, IAAC's Department for Prevention has established a joint agreement with provincial governors and NGOs. This agreement calls for the implementation of education programs and collaboration with NGOs at the local level. The implementation of this agreement is monitored by the cabinet secretariat. The IAAC reports its activities to the public via the press and media as well as during missions to the provinces. As a result of these institutional arrangements, anti-corruption activities have flourished both at the national and at the local level since 2007.

In Colombia, the challenge for the Office of the Anti-corruption Czar lies in the number of agencies that can be involved in an investigation. Table 19.3 summarizes the government agencies that have jurisdiction over corruption offenses. To facilitate the ACA work, an agreement between the Prosecutor General, the Attorney General and the Comptroller General

Table 19.3 *Colombia – agencies with jurisdiction over corruption offenses*

Institution	Type of control
Anti-corruption Czar	Administrative
Comptroller General	Fiscal
Attorney General's Office	Disciplinary
Prosecutor General's Office	Criminal
National Accounting Office	Compliance
Taxes and Customs	Administrative/criminal
Internal Control Offices	Administrative/disciplinary

was signed on February 10, 2003 that set up a Coordinating Committee. By the end 2005, the Attorney General had conducted 80 investigations, the General Attorney's Office had conducted 56, and the Comptroller's Office had conducted 72.

In sum, clear and strong interagency relationships and coordination are essential for the effective functioning of ACAs. A clear mandate can help agencies work together. Across the countries examined, coordination and information sharing have been addressed through the creation of special commissions, the introduction of special legal provisions, or by the signing of special agreements among the relevant institutions. We also observe examples of collaboration with other law-enforcement agencies, central banks, and revenue-monitoring agencies. Less common are examples of collaboration with regulatory agencies for the implementation of the ACA work.

7. Resources and organization¹⁴

Although the mandate and the existing legal framework of a country are key in defining the institutional environment in which an ACA operates, the level and type of resources available and the ACA's internal organization can affect its ability to deliver. The term 'resources' encompasses both human resources (and their quality), and budgetary and infrastructure resources. The staff of an ACA should reflect its mandate and functions. For example, ACAs with a mandate focused on prosecution should employ forensic specialists, financial experts, and auditors in addition to prosecutors. ACA staff should be well trained and of sufficient number. Selected staff should have highly specialized skills and a strong ethic of professionalism and integrity. Staff should be well compensated and subject to integrity reviews. In addition, ACAs should have an adequate budget, and the budget allocation should be independent of the political cycle.

Human Resources

The ability of ACA to select and hire individuals because of their technical competence is key factor that can contribute to its effectiveness. This can be challenged because of nepotism and a lack of a merit-based system to manage civil servants, in general, and ACA staff in particular. As a result, a few ACAs have introduced their own rules to ensure transparent and competitive recruitment of staff. The ICAC in Mauritius, for example, advertises for posts in three newspapers and uses an interviewing panel that includes a psychologist. In addition, new ICAC staff are subject to a probation period.

The challenge of selecting staff can be aggravated by the scarce technical skills available in the country. Often the ideal profile requires extensive experience and knowledge in a broad variety of subjects that is rare in many countries. The length of the appointment is another important factor to consider, given the technical competence necessary for the functioning of these authorities and the need for continuity. ACAs, therefore, struggle to identify and retain much needed technical staff, especially when facing tight budget constraints. In addition, they seldom have the resources to provide staff training, despite the complex and evolving phenomenon these agencies have to deal with.

Budgetary Resources

Effectiveness relies on both the resources necessary to do the work and the continuity of those resources over time. A common complaint, voiced by many ACAs, is the limited resources available and the uncertainty surrounding the budget allocation for their ACA. This makes it challenging for ACAs to establish the technical foundations needed to carry out their mandate, creating a vicious circle of initial high expectations followed by limited results and loss of credibility for the ACA. Although all governments face budget constraints, the allocation of limited resources for ACA activities may signal the lack of a genuine commitment to the ACA's mission by the government.

To break this vicious cycle, the international community often decides to intervene. The extent and length of this intervention, however, can have unwanted results. International or bilateral development agencies support the initial costs of the establishment of ACAs and stay involved in an attempt to compensate for lack of resources. Despite geographical differences (Figure 19.4), more than half of the ACAs interviewed report donor involvement in their activities. This is not a long-term solution and in a few cases ACAs have seen long-term sustainability slip away once external funds run out.

A more effective approach would be to ensure long-term budgetary

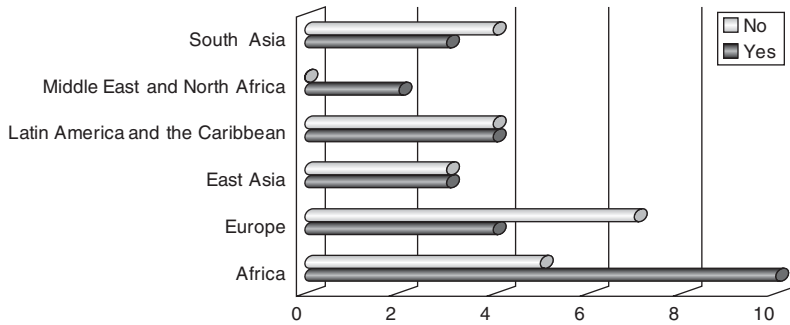


Figure 19.4 Donor involvement

commitments when establishing an ACA and to use external resources to speed up the implementation of initial anti-corruption programs. In some countries, legislators have put ‘handcuffs’ on themselves by not allowing any cuts in the budget of ACAs. Other creative devices have been used to protect the ACA budget. The reason why these protections are necessary is that ACAs will never be ‘popular’, especially if they are effective. The ICAC in Mauritius is an example of this approach. The ICAC administration prepares its own budget and submits it for approval by a parliamentary committee and by parliament itself. This approach can help address the issue of sustainability, but it does not necessarily address the issue of sufficient resources. Even though the ICAC receives 18 percent of its budget from the government, the agency still suffers from insufficient resources.

Organization

The structure of ACAs affects their ability to carry out their mandates. The issues of span of control and reporting lines affect the effectiveness of these agencies. But this architecture can vary widely. Detailed charts from six countries Brazil, Latvia, Mongolia, Indonesia, Mauritius, and Argentina are available from the author upon request. The agencies’ significantly different mandates are reflected in their different organizational structures. They have all been somewhat successful in implementing their programs, suggesting that there is not one best organizational structure.

The organizational differences among these agencies can lead them to address corruption in different ways. Consider, for example, the top of the organization. In Indonesia there are seven commissioners selected by the legislature, while in the other agencies there is only one head. There are strengths to both structural regimes. Multiple commissioner models can lead to political disputes among the commissioners. In contrast, the

'single leader' model can lead to a personality-driven organization where the removal of one individual can make the ACA ineffective.

8. Independence, oversight, and accountability

Independence is the standard for effective ACAs.¹⁵ The previous section discussed the issue of budgetary resources and the need for budgetary autonomy and stability. Next we focus on the independence of the leadership of the ACAs, on its freedom of action, and on its accountability. On the one hand, independence is critical for ACAs to operate without interference or pressure from vested interests. On the other, the concept of complete independence without accountability is meaningless in any governmental structure. The ACAs we examined suggest two important lessons: the legislative set-up is critical but cannot alone guarantee independence because ACAs cannot be fully insulated from political interference. Furthermore, a clear legal framework needs to be paired with strong leadership, continuous engagement with the public, and the publication of measurable results to shield ACAs from political pressures.

Independence and Oversight

The first factor that can contribute to independence is the selection of the ACA leadership, which should have the technical capacity and integrity to carry out the agency's mission. Without clear standards for appointment and removal, the head of the agency can be intimidated or at least limited to a far narrower scope than the ACA's legal authority would warrant. Table 19.4 summarizes the findings for the ACAs interviewed.

A pattern seems to emerge. In an attempt to ensure independence and to control for political interference, the authority with the power to appoint the head often differs from the body that can remove the top official. In addition, ACA heads often can serve only for a limited term. This seems to suggest that ACA statutes may have found a way to ensure the independence of the leadership.

The law on the books may however be fragile. The history of the Slovenian Commission for the Prevention of Corruption illustrates the ongoing challenges faced by many of these agencies and the role played by the existing legal framework paired with a strong internal leadership to fence off the repeated political attempts to interfere with the Commission's work. In 2004, a governmental change in Slovenia shifted the tide of political support away from the Commission for the Prevention of Corruption. By February 2006, parliament had pushed through a new law that eliminated the Commission in favor of a committee composed of deputies from the National Assembly. In response, the Commission prepared a counter proposal and then lobbied 30 MPs to communicate the

Table 19.4 *Leadership and ACAs*

	Country	Who appoints the head of your agency?	Who has the authority to remove the head of the ACA?	Is there any term limit for the head of the ACA?
1	Mauritius	Prime Minister	Parliamentary Committee	Five-year term
2	Latvia	Parliament	Parliament	Five-year term
3	Mongolia	Appointed by parliament upon nomination by the President	Parliament	Six-year term
4	Slovenia	Parliament	Parliament	Six-year term with no possibility for re-appointment
5	Ethiopia	Appointed by the House of Peoples upon nomination by the Prime Minister	House of Peoples Representatives	Six-year term
6	Singapore	President	President	N/A
7	Costa Rica	Solicitor General of the Republic	Justice Minister	N/A
8	Peru	Prime Minister	Commission	N/A
9	Guatemala	President	President	N/A
10	Sierra Leone	President, subject to parliament's approval	President for reasons of inability to perform the functions of the office of the Commissioner/ Deputy Commissioner subject to recommendation by a tribunal and approved by a two-thirds majority in Parliament	A term of 5 years and eligible for reappointment for another term of 5 years only
11	Uganda	President with approval of parliament	President, after investigation by a tribunal appointed by parliament recommendations	Maximum of 2 terms of 4 years each

Table 19.4 (continued)

	Country	Who appoints the head of your agency?	Who has the authority to remove the head of the ACA?	Is there any term limit for the head of the ACA?
12	Philippines	President	Fixed term, only impeachment by the Legislature	Seven-year term
13	Senegal	President	President	Six-year term
14	Indonesia	President	Parliament	Five-year term
15	Tanzania	President	President	N/A
16	Sri Lanka	President	Parliament	Three- year term
17	South Korea	President	President	Three- year term
18	Rwanda	President with confirmation by Senate	Senate	Five-year term
19	Haiti	President	President	No term
20	Namibia	Parliament	Parliament upon recommendation by the board chaired by the Judge of High Court or Supreme Court	Five-year term
21	Slovakia	Minister of the Interior	Minister of the Interior	No term
22	Estonia	Government appoints general prosecutor on the proposal of the Minister of Justice	Minister of Justice or the government on the proposal of the Minister of Justice	Five-year term
23	Mozambique	Attorney General	Attorney General	No term limit
24	Lesotho	Prime Minister	Tribunal	Five-year term
25	Malawi	State President	State President and parliament	Four-year term
26	Zambia	Head of the state upon nomination by parliament	Parliament	At age 65, he/she will retire
27	Botswana	President	President	No term limit
28	Kenya	President upon nomination by parliament	President upon nomination by the Tribunal	Five-year term
29	Brazil	President	President	No term limit

Table 19.4 (continued)

	Country	Who appoints the head of your agency?	Who has the authority to remove the head of the ACA?	Is there any term limit for the head of the ACA?
30	Hong Kong	Chief Executive of the Hong Kong Special Administrative Region to nominate and report to the Central People's Government for appointment of the ICAC commissioner	Chief Executive of the Hong Kong Special Administrative Region is empowered to recommend to the Central People's Government the removal of the ICAC commissioner	No term limit
31	Macedonia	The members (seven) of SCPC are appointed by parliament with tenure of 5 years. The president of SCPC is one of the members, who is elected by members themselves with the tenure of one year	Parliament has the authority to remove members of SCPC (including the head), within prescribed conditions into the Law on Prevention of Corruption	State Commission elects a president from among the members for a term of one year
32	Bhutan	Impeachment by parliament	Head of State upon joint recommendations of the collegiate body comprising the Prime Minister, Speaker of the National Assembly, the Chairperson of the National Council, the Chief Justice of the Supreme Court and the Leader of the Opposition	Five years and non-extendable

Table 19.4 (continued)

	Country	Who appoints the head of your agency?	Who has the authority to remove the head of the ACA?	Is there any term limit for the head of the ACA?
33	Romania	Proposed by the Minister of Justice and appointed by the President of the Republic, after the Superior Council of Magistracy gives its opinion on this matter	Chief Prosecutor of DNA can be removed by the President of the Republic, at the proposal of the Minister of Justice, after the Superior Council of Magistracy gives its opinion on this matter	Three years with the possibility of being reappointed once
34	Mon-tenegro	Government of Montenegro	Government of Montenegro	Four-year term. There is no limit to the number of times a head of ACA can be reappointed
35	Hungary	Minister of Interior	Minister of Interior	No term limit
36	Czech Republic	Chief of Police Presidium	Chief of Police Presidium	No term limit

arguments to the Constitutional Court in such a way that the Court was obliged to take them into consideration. The Constitutional Court temporarily suspended the law in April 2006 and ultimately declared at least a quarter of the provisions unconstitutional in March 2007. In particular, it ruled that the separation of powers outlined in the Constitution was not upheld under the new anti-corruption framework devised by parliament. The provisions of the Prevention of Corruption Act (2004) continued to apply until unconstitutional provisions were amended and/or removed. A further change in government in late 2006 swung political opinion back in support of a separate Commission, and the amendments stalled in parliament.

The Slovenian Commission again faced political pressure in 2008 and 2010 when the National Assembly demanded the resignation of its director in two separate cases. In 2008, a decision was adopted in parliament to remove the director unless he provided proof of the Commission's

findings in a bribery case involving the prime minister and the previous government. The director pointed out in a press conference that this was not a lawfully valid reason for his removal from office, and consequently, he remained in office. In 2010, formal proceedings for the director's removal were initiated by the parliamentary group that oversees the Commission, which took this action in response to the Commission's refusal to provide confidential details about corruption cases, including the names of whistleblowers. The Commission's position was supported by a Constitutional Court decision in early 2010. In June 2010, the parliamentary oversight group was abolished after passage of an Integrity and Corruption Prevention Act.

Complete independence of the ACA's leadership from political pressure and the political cycle is impossible. Several countries have tried, however, to put a number of protections in place. Some have used a lengthy term of office for the head of the agency or commissioners, as illustrated in Table 19.4.¹⁶ Others have ensured that remuneration for officials or reduction in agency budgets could not be diminished while they served in their positions. Others have created independent advisory boards that can investigate charges and either verify or exonerate individuals who were accused, protecting the independence of ACAs.¹⁷

A second factor that can contribute to the independence of ACAs is its freedom of action to pursue anti-corruption cases. The ability to stifle an audit or investigation can have a chilling effect on all the functions of ACAs. This kind of interference is often political, as reported by a few of the ACAs interviewed, and it can come from senior officials and from judges (who sometime place restraining orders on ACAs for what appears to be political motives). For this reason the European Partners against Corruption (EPAC) has introduced guiding principles for ACAs, including:

'The [ACA's] ability to engage in its activities and carry out its functions – especially to investigate and/or prosecute concrete allegations – effectively and efficiently and without undue influence or reporting obligations at its own discretion without prior consultation or approval.'

These two factors cannot alone guarantee independence. In Indonesia, the KPK, while endowed with the appropriate mechanisms to ensure independence, was still not able to shield itself from political interference. At the same time, ACAs can only be effective if they are viewed as independent from government control. In Hong Kong, the ICAC acts as a buffer to allow its professional staff to carry out their mandate. The ICAC commissioners are the public face of the organization, and although they provide strategic direction, they seldom, if ever, interfere in the day-to-day

operations of the audit, investigation, or education professionals. This suggests that governments that have clearly spelled out the roles of the oversight bodies for ACAs, with specific limitations, can create powerful arrangements.

Accountability

Although independence is often viewed as essential for ACA effectiveness, accountability is the other side of the same coin. Accountability refers to how the agency fits into the overall justice, budgetary, and administrative structures. Accountability can also refer to what the ACA shares with citizens about its work. ACAs should by their nature be integrated in the existing system of checks and balance of their country. Thereby, accountability and independence can help reinforce the credibility of ACAs.

The case of the ICAC in Mauritius illustrates two types of accountability that can apply. The ICAC was established under the country's Prevention of Corruption Act in 2002. It is managed by a board, comprising a director general as chairperson and two members. The board includes the following divisions: investigation, prevention and education; legal; and administration and finance. The budget proposal is scrutinized and approved by a parliamentary committee and audited by the director of audit. The ICAC although operating as an independent body, is accountable to a parliamentary committee, which put in place mechanisms to ensure proper checks and balances in its operations. The committee is composed of nine members of parliament and the chairperson is designated by the prime minister. The committee meets at least once a month.

- *Administrative accountability* The parliamentary committee ensures administrative accountability of the ICAC by monitoring and reviewing its activities. The committee monitors how the ICAC fulfills its functions under the Act, reviews its budgetary estimates, and issues instructions as necessary with regard to ICAC's financial management and staffing requirements, as well as the allocation of resources to its various operations. The committee's role does not extend to monitoring matters related to any investigation being carried out by ICAC or the findings of the Commission in relation to a particular investigation.
- *Judicial accountability* In matters where the ICAC is of the view that an investigation has disclosed prima facie evidence against a person and considers prosecution, the matter is referred to the Director of Public Prosecutions (DPP). No prosecution can be instituted by ICAC without the consent of the DPP.

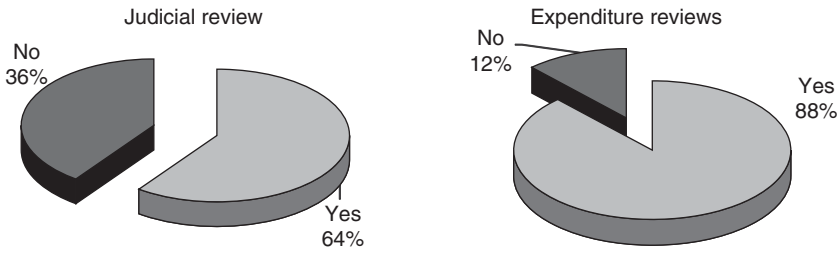


Figure 19.5 *Reviewing the work of ACAs*

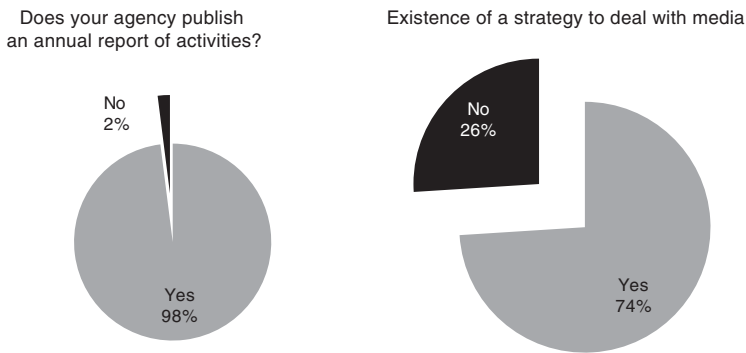


Figure 19.6 *Information and the media*

Overall, the data highlight the importance of accountability to support the ACAs' work. In our survey we focused on expenditure review as a form of budgetary accountability, and the publication of annual reports and judicial review as forms of administrative accountability. We also asked whether the agency has a communication strategy to deal with the media. Expenditure reviews and publication of annual report are the norm; judicial reviews less so (Figures 19.5 and 19.6). This may be a reflection of the variety of mandates displayed by the ACAs in our sample.

Oversight of ACA activities is an additional piece in the 'accountability' puzzle. Information about ACA oversight, however is limited. Oversight is often delegated to a senior official in the administration, such as a general counsel or cabinet secretary, and it is not carried out by the same body that appoints the head of the ACA. In some countries there are formal rules for 'informally' notifying other law-enforcement authorities (prosecutors general, ministers of justice) about sensitive audits or investigations. This reporting line, to the head of government or other very senior official,

although ensuring accountability, can become a significant weakness for ACAs.

Most ACAs have a communication strategy for dealing with the media. ACAs without a communications strategy have a significant disadvantage because they do not know when and how to inform citizens and the public. This can lead to the loss of allies and sometimes create unwitting enemies.¹⁸ Public meetings, citizens' advisory councils, anonymous hot-lines, and public access to information – like the ones used for example in Mongolia and Rwanda – are all popular tools for carrying out the work of the ACAs and for gaining public support. Public support can be an extremely powerful tool to protect ACAs during difficult and uncertain times, as the cases of Latvia and Indonesia illustrate.

The Indonesian KPK suffered dramatic setbacks in 2009 when its chairman was arrested on murder conspiracy charges, and two other commissioners were suspended from duty and then arrested on charges of corruption. The chairman was convicted of the charges and is now appealing the decision. It was widely felt that these charges, particularly the unrelated charges against the two commissioners, were an attempt to undermine the KPK. Popular support for the commissioners was widespread and vocal. Public demonstrations were held, and a support page was launched on the social networking site, Facebook, which attracted over a million members. A Presidential Commission was rapidly established to review the cases. The charges were eventually dropped after wire-tapped evidence was produced before the Constitutional Court that the allegations had been rigged. Although KPK commissioners have since been suspended on charges of administrative misconduct, expressions of popular support, galvanized through social networking media, continue to provide a vital bulwark for the KPK against interference from the executive or the legislature. Although the KPK did not spearhead the social media outrage, its well-established communications and outreach functions enabled it to act strategically in response to popular support.

Accountability can also refer to how the ACAs measure performance and success. ACAs have an especially difficult time keeping track of their work because of the complexity of their mandates and the challenge to capture their impact, especially in the prevention area (Meagher, 2005; Doig, 2007). ACAs often underestimate the importance of managing public expectations and fail to communicate clearly and regularly with the public. This can translate into a loss of credibility and declining popular support. On the contrary, visible results and strategic communication can create support and sustain the ACA work during difficult times.

Most ACAs report that they have a system to measure performance (Figure 19.7). When asked to provide details of the system used to measure

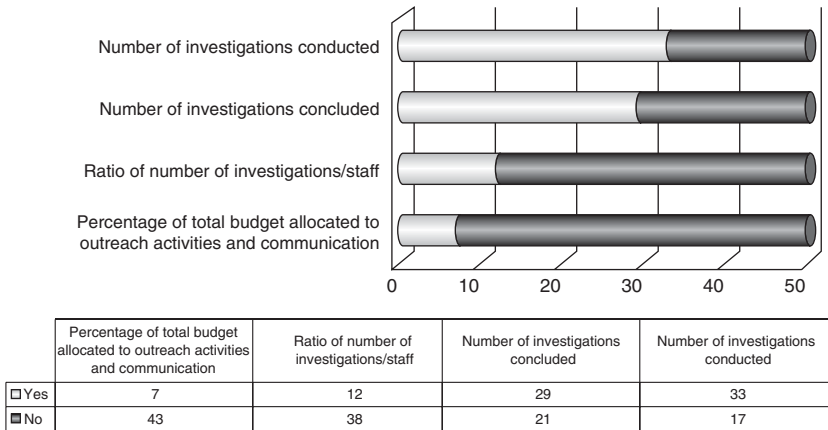


Figure 19.7 *Measuring performance*

performance, however, it emerges that very few ACAs capture their preventive and outreach activities; most focus on the number of investigations completed and convictions. This bias toward the law-enforcement function of the ACAs can provide an incomplete picture of ACA performance and lead to a negative view of the ACAs’ impact.

The success stories of the Hong Kong and Singapore ACAs both make a strong case for the creation of a comprehensive and public monitoring system. The ICAC in Mauritius has taken a similar approach making the progress of its work publicly available on the internet. The ICAC is implementing a performance-based budgeting system monitored by a parliamentary committee. The progress in the number of investigations initiated, completed, and prosecuted is updated regularly and published in various reports fully accessible by the public. All the cases pending trial including a copy of the indictment are posted on the ICAC web page as well as all judgments, rulings, and comments on certain salient weaknesses and strengths.¹⁹ The Brazilian ACA, the CGU, has also established an extensive system to make information about its activities publicly available on the web.²⁰

9. Conclusions

ACAs have in recent years received a great deal of attention and criticism because of the high visibility of their work and their seemingly limited impact compared to the resources devoted to them. Although they are a ‘new institutional responses to corruption’ (as suggested by de Sousa, 2010), ACAs are often greatly misunderstood and insufficiently analyzed.

This chapter provides an overview of the challenges and experiences of ACAs based on a survey of 50 ACAs. Its objective is to explore more systematically this type of institution and draw some lessons for policy purposes.

The story that emerges highlights the complexity and variety of these institutions, and challenges the negative view of ACAs common among many practitioners. Political will and commitment are the cornerstone of every successful anti-corruption effort. Once this is ensured, ACAs need an explicit role and mandate, and, as with every public institution, they require adequate resources to operate. Because of the complexity of their work, ACAs must also position themselves clearly within the institutional environment of the country where they operate and establish effective interagency coordination and cooperation. A lack of clarity about their mandate and position, paired with unclear political commitment, has contributed to the emergence of bodies that often encompass multiple and not well-defined functions. Clear and comprehensive performance indicators, although essential to signal results and show their impact, often appear to be unfamiliar concepts among ACA officials, making ACAs more vulnerable to political pressure and vested interests.

Three lessons should be highlighted for policy purposes. Given the variation observed among ACAs and their institutional and political environments, policy makers should attempt to ‘replicate successful experiences’ with caution and only after having carefully understood and integrated country-specific factors in the approach. Furthermore, a comprehensive and clear set of performance indicators should be established from the beginning to guide performance objectives and to capture the impact of ACAs activities, beyond the number of cases investigated and/or prosecuted. Only in this way will policy makers, citizens, and donors be able to appreciate and evaluate in a more meaningful and objective way the effectiveness of ACAs over time. In addition, donors should work in partnership with ACAs and promote a medium-term view, focused on building local capacity and promoting sustainability of anti-corruption efforts at the country level. Where possible, donors should coordinate anti-corruption efforts to avoid duplication and waste of resources, since this can negatively impact ACAs.

Finally, the results discussed in this chapter call for further and more advanced analytical work based on a broader set of countries. The sample used in this chapter is skewed toward the African continent, with a limited representation of the other regions and especially of agencies from the Middle East. Given the variety of experiences and modalities observed across ACAs, more data is needed for sound policy recommendations. Moreover, the limited historical data available do not allow us

to analyze empirically the possible link between ACAs effectiveness and level of institutional development observed in the country. This analysis could help explain the partial failure to replicate the successful cases of Hong Kong and Singapore in emerging economies and developing countries (Svensson, 2005). It could also help identify the factors behind the progress and success observed in several countries, such as Brazil, Mauritius, Botswana, Slovenia, and Indonesia.

Notes

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2. For the purpose of this study, an ACA is defined as a permanent agency, unit or department established by a government that has the mandate of providing centralized leadership in one or more of the areas of anti-corruption – prevention, public outreach and awareness raising, policy coordination, investigation, and prosecution (Meagher, 2005).
3. Huther and Shah, 2001; Hussmann, 2007; Doig, 2009.
4. Council of Europe, 2004, 2005; Heilbrunn, 2004; Doig et al., 2005; Meagher, 2005; UNDP, 2005.
5. The Corrupt Practices Investigation Bureau was established in Singapore in October 1952, while the Anti-corruption Agency in Malaysia was introduced in October 1967. For a detailed discussion, see de Sousa (2010).
6. For an extensive discussion and review of these international standards, see OECD (2007).
7. For a complete listing on participating countries, visit <http://www.unodc.org/unodc/en/treaties/CAC/signatories.html>.
8. For additional information and to become part of this initiative, please contact the author.
9. The data collection has focused mostly on developing countries and emerging economies. Efforts are under way to gather information from developed countries.
10. The adjective ‘durable’ refers to the fact that these agencies were established to address an ongoing problem in the medium to long term and have persisted over time.
11. In the survey we list eight separate functions by splitting some of the categories proposed by OECD (2007) for increased clarity.
12. In an attempt to address the coordination challenge, the World Bank Institute designed a participatory approach to strategy design and implementation that required the creation of a coordinating body which included different stakeholders. Often, the ACA in the country led the coordinating body during this process. The success rate of this approach, however, was low mostly because of political-economic pressures that the coordinating body was unprepared and unable to address.
13. The impact of the KNAB in Latvia, however, seems to have been more significant than those of other agencies. This is, in part, due to its mandate which requires the KNAB to monitor political parties’ compliance with party financing and election campaign regulation. This preventive function has repeatedly created tensions with political interests

- while at the same time it has increased the credibility of the agency in the eyes of the public.
14. This section and the following one draw on Gilman and Recanatini (2011), 'Anti-corruption agencies workshop: a practitioner report', forthcoming.
 15. UNCAC, Chapter II, Article 6, 2.
 16. European Partners against Corruption (EPAC) suggests two parliamentary terms plus one year; usually about 12 years. In the US the appointment of the Comptroller General is for 15 years.
 17. The US Council of the Inspectors General on Integrity and Efficiency has an Integrity Committee with a majority of non-inspectors general and the authority to use the FBI for investigations.
 18. See Byrne et al. (2010), available at: (<http://siteresources.worldbank.org/EXTGOVACC/Resources/CorruptionWhitePaperpub31110screen.pdf>).
 19. ICAC web page, available at: <http://www.gov.mu/portal/sites/icac/index.htm>.
 20. The Brazilian ACA, available at: <http://www.cgu.gov.br/english/CGU/>.

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