

New Anti-Corruption Governments:
The Challenge of Delivery
Nairobi, 12 - 13 October 2004

**FINAL
RECOMMENDATIONS**

The recommendations that follow are intended to serve as a first step in providing advice and assistance to new governments that take office in the context of a major system change and are genuinely committed to introducing anti-corruption reforms. There is a special focus on these new governments because in transition circumstances there is a need to move quickly in the face of particularly great challenges, involving unusually high political complexities and risks.

The recommendations arose out of a meeting that took place in Nairobi, Kenya in October 2004 on the subject of New Anti-Corruption Governments; the Challenge of Delivery, which brought together 233 participants from 33 countries, including representatives of government, the private sector and civil society in transition countries, as well as representatives of international institutions and of donor countries. The recommendations are based on the conclusions reached in 16 conference workshops and in ten specially prepared country case studies. They were prepared by a Transparency International team in consultation with the chairs and rapporteurs of the conference workshops and were presented in draft form to the final plenary session of the New Governments Meeting.

General

1. The struggle against corruption in the transition context needs to be seen in relation to the struggle for democracy and anti-corruption reforms must be introduced in tandem with broader democratic initiatives including promotion of fundamental freedoms, tolerance, protection of human rights, promotion of principles of equality and social justice and enhanced space for citizen's participation in public affairs. The government and its reform efforts should be based on a system of checks and balances between different branches and shared responsibility for integrating anti-corruption values. Accommodation of and respect for dissenting views enhances openness and is one of the conditions for success of the reforms. An excess of executive branch authority over the other branches may help the government to make quick decisions but is not effective in the long run.
2. Anti-corruption reform should be part of a comprehensive broad socio-economic reform programme. Reform should be undertaken in the broad framework of ensuring good governance and improving the livelihood of citizens
3. The means used and actions taken must be sensitive to the capacity, level of economic development, social and political development and historic circumstances of each country, rather than copied models or strategies borrowed from other countries.

4. The fight against corruption in transition countries cannot be based only on introducing changes that increase the government's ability to detect and prosecute corrupt behaviour. Preventive measures, consisting of both systemic reforms and short-term preventive measures are important as well.

Key action areas

Planning for change

1. Waiting political parties should prepare adequately for the transition before they take office.
2. Good planning and prioritization is key since governments are generally more receptive to and able to carry out reform during the first year in office. The new government needs to have a plan and a coordinated approach for anti-corruption reform. This plan should include timetable, responsibilities and communications strategy. Governments should be strategic in their reform process and not just do things in an ad hoc manner.
3. There is a great need to map out the reformers and non-reformers before the reforms are implemented. Strategies to buy in the support of senior bureaucrats and to defeat the anti-reformers can be easily developed if mapping is well done.
4. Before implementing reform, invest in a good diagnosis in order to set benchmarks and identify the potential for quick wins. But be careful with quick wins that they don't turn into quick losses. Before implementing plans for quick wins, think about the consequences and implications, including unintended ones, of every reform step. Also bear in mind resources needed and public expectations that are raised. Avoid making announcements before you act.
5. The constitutional and legal systems have to be reviewed in order to avoid old networks using flawed systems for their purposes.

Implementation and sequencing

1. Leadership from the top by example is essential. When members and officials of the new government are suspected of being tainted, they must step aside or be suspended for the duration of the investigations. Involvement in a coalition government composed of parties fighting corruption and parties involved in corruption will make it very difficult to deal with corruption.
2. Quick action is needed since the energy and will to fight corruption dissipates as the realities of the burden of office and vested political interests bear on the new government. The pace of reform needs to be constant or accelerate to discourage the anti-reformers, since a stop-go approach creates opportunities for anti-reformers to regroup to defeat the reformers.
3. Anti-corruption reform must be a high priority and well-managed. It should have a clear agenda, priorities and sequencing.
4. The new government should form a highly professional team that is able to develop and pursue anti-corruption changes.
5. Reform efforts in transition countries need to tread a careful balance between rooting out structural causes and the vigorous pursuit of corrupt individuals by law enforcement bodies. It is difficult if not impossible to sustain anti-corruption reforms without reform of dysfunctional public institutions and effective public/ civil education.

6. Where possible, anti-corruption reforms should be carried out simultaneously within all strategic institutions, with quick wins at all levels, in order to ensure that anti-reform groups do not utilize the short time available to identify strategies to defeat the reforms. However, such simultaneous action often will not be possible. In the more usual context, reformers should focus on actions that generate strategic advances and results perceived by the public (not only by the media) rather than trying to tackle every issue at once. In particular, judicial reform should be given the highest priority (see below)
7. One of the least expensive reform measures that can be introduced as a quick win is increasing access to information, which generates public trust. Freedom of information legislation should be quickly passed if not already in place. Another key step may be to introduce institutional mechanisms to enhance interagency cooperation in bringing about transparency in government.
8. It is important to introduce merit-based appointments and transparent recruitment of public servants, including the police. Quick wins in reforming the civil service can include creation of an effective complaints system; and firm administrative action against those suspected of wrongdoing. The issue of government officials' salaries is also one that the government needs to focus on. Reformers should be aware that if the salaries are increased above market level, it is possible that new corrupt elements will appear (selling off of positions).
9. Reform measures should be consistently applied without exceptions for special cases in order to avoid an appearance of arbitrariness.
10. Communication of initiatives and results and mobilising the public is a high priority. (See also below.)

Mobilizing public support and dealing with resistance

1. Public enlightenment as to the evils of corruption and the penalties should be intensified at all levels of government institutions. The cost of corruption must be made clear to the general public. It must be shown how corruption relates to and affects the real lives of people.
2. Communication of initiatives and results must be given a premium. The new regime should support freedom of information, through administrative directives and legislative reform. In a transition situation an explicit connection has to be made between dealing with the past and the new efforts to fight corruption. Establishment of independent community radios can in some cases be a crucial and inexpensive quick win which can help ensure both access to information and detection of corruption.
3. Reformers should build broad coalitions across all sectors of society to ensure that the reformers are not isolated. Single champion reformers cannot sustain reforms; a critical mass is required.
4. The new government should build alliances and coalitions only with reform parties never with status quo parties.

Dealing with the past

1. Each country must deal with the past on the basis of using and applying universal principles. Individual solutions should not in any way contradict the universal principles.

2. New leaders should cut ties and access of members of old corrupt political parties to the anti-corruption government.
3. The government should involve Parliament in determining the parameters of efforts to address past crimes in order to defuse tensions and claims that there is a hidden agenda. However, politicians should not be involved or seen to be involved in actual investigations of corruption and deciding who should be prosecuted.
4. A monitoring unit should be established in the Presidency to monitor all cases under investigation by the anti-corruption agencies.
5. The results of public probes should be released to the public as soon as concluded.
6. On the question of prosecuting crimes, the different nature of various transitions needs to be taken into account. Often, the transfer of power means that certain elites cannot be prosecuted immediately. Efforts should be pragmatic according to the circumstances. The essential principle must be not to reward crimes with impunity. When addressing crimes from the past regime it is necessary to be careful that this does not undermine forward-looking reform efforts. It also has to be taken into account that dealing with the past is often influenced by adversary external forces and factors, operating against prosecutions and asset recovery. On the other hand, prosecution of big corruptors is desirable to send a clear message. (See additional points in section below on Prosecuting crimes and recovering assets.)
7. Drastic change is needed in civil service leadership positions all the way down the ladder. Merit-based and transparent recruitment should be introduced.

Specific executive branch institutions and processes

Tackling government procurement

- The new government needs to develop a clear plan for procurement reform and should frame it in terms of service delivery. In preparing reforms, governments should take into account the impact of access to information and party finance in relation to procurement.
- Mechanisms for transparency and public disclosure of information on procurement need to be put into place quickly. Some reforms can be conducted through administrative changes; legislative reforms may also be needed but these will take longer. In the process of introducing changes in legislation, reformers should abstain from introducing issues that may lead to ideological debates.
- The government needs to communicate to the public the reasons for its procurement reform and facilitate public participation. Maximum disclosure on all procurement is required as this builds public support. Mechanisms could include budget transparency and e-procurement.
- Since pre-election periods are particularly vulnerable to questionable procurement processes, it is absolutely necessary to review procurement and contracts concluded just before and just after this period. One approach is to set up a committee to review such contracts. After elections, a critical look should be taken at critical sectors for procurement corruption such as big construction and military contracts and either put a hold on these, pending establishment of oversight mechanisms or ensure very strict compliance with the rules. As a part of a system of incentives and punishments, governments should adopt blacklisting of corporations that participated in corrupt procurement.

Building integrity in police and judiciary

- Reform of the judiciary is the highest priority for a new government. As mentioned above, the government should focus on provision of access to information to generate trust, an effective complaints system and firm administrative action against those suspected of wrongdoing. Replacement of judicial officers should be based on peer review coupled with generational change through incentives for early retirement and related options. The removal of judges must be followed by new appointments on the basis of clear, publicized criteria and a transparent process.
- Since the police force is the most visible arm of government, police reform is an important avenue for impacting on public opinion positively. Judicial reform is key to the success of any initiatives since resistance to anti-corruption efforts benefits from legal loopholes and a sympathetic judiciary that has been part of a corrupt system.

Building integrity in tax, customs, budgeting and audit

- The government should establish new financial responsibility legislation, or ensure implementation of existing legislation, requiring of government and its agencies strict and clear rules of planning, budgeting, execution, monitoring and accounting for the resources spent by them.
- It is essential to mobilise public support for transparency and accountability in revenue collection and expenditure and generally for good public financial management. To do so it is necessary to provide accessible and simplified budget information to enhance public participation. For citizens to comply fully with tax reform, a demonstration of value for money on the expenditure side is important.

Addressing election and party finance

- The sequence of legal reforms should proceed in the following order: Constitutional guarantees for civil and political rights, development of electoral law, enactment of law on political finance and political parties together. With regard to party funding, state funding can be important to rectify disparities in the campaign resources between the former ruling party and other parties and to deal with corruption in party finance. Citizen participation in the reform process is key.
- Citizen participation in the reform process is key and there is a need for effective mobilisation of citizens on this issue.

Prosecuting crimes and recovering assets

- Incoming governments fighting corruption of a departing regime should not expect a trail of evidence and should be prepared to face resistance in recovering assets. They should have a plan regarding gathering evidence and avenues for seeking and obtaining international mutual legal assistance.
- New governments should take into account that asset recovery is likely to be a slow process. If asset recovery is given priority, alternatives to prosecution should be considered, such as plea bargaining and civil actions, since prosecution and conviction of culprits may not guarantee results in asset recovery. Forensic investigative, intelligence and asset recovery units should be established quickly and efforts made to assemble the necessary legal expertise required.
- Ideally, corrupt individuals no matter how highly placed should be exposed, prosecuted and if found guilty jailed and ostracized and their illegally acquired property confiscated to serve as a deterrent to those intending to engage in corrupt practices. Serious economic crimes should not be resolved by mediation.
- The government should consider plea bargaining to arrive at judicial settlements and civil actions, taking into account the aim of avoiding impunity.

Role of actors other than the new executive branch

Parliament

- In recognition of the principle of separation of powers, parliament should be accorded the necessary independence to carry out its oversight, representation and legislative roles. Parliaments should enact a framework for monitoring and evaluation of public institutions and assessing their performance. At the same time, mechanisms should be put in place to ensure accountability of Parliament towards the electorate and a code of conduct for parliamentarians should be developed.

Judiciary / Anti-corruption agencies

- Independent anti-corruption institutions need to be backed up with a strong political will to act. Lack of political will leads to frustration.

International community

- The international community has an important role to play in transitions and should consider the effect of their criticisms and rating of countries. Donors should be well informed about the political economy of the country to avoid making elementary and costly mistakes in their efforts to provide development assistance in countries in transition. Their support and their tactical application of leverage are vital and should not be volatile.

There is a need for more donor coordination in support of transition governments. Furthermore, donors should have rapid response funds to enable them to make quick decisions to assist anti-corruption plans of transition stakeholders. Donor support needs to be flexible and fast, with allowance for learning by doing. Donors should in particular provide support for new governments in their efforts to recover corruptly acquired assets.

Media, Private Sector and NGOs

- NGOs, media and other institutions tread a thin line between detailed scrutiny and disillusion in discussing corruption. They can play a crucial role in sustaining the political will to reform. A coalition of the media and NGOs that keeps the spotlight on corruption is essential to maintain public attention and support for reforms. Outside actors such as the media and NGOs need to be very vigorous in their scrutiny, but at the same time should try to convey to the public the relative importance of various issues, scandals and problems. They should help the public to understand the level and extent of corruption in various government bodies and to assess whether there is an actual commitment on the part of various parties and politicians to fighting corruption. However, new governments should be aware that the media may also be used to fight reforms.

Civil society should keep space for confrontation while collaborating cautiously with the new government. They need to find ways to work with governments that have both reformers and those resisting reforms. They must continuously remind the government of the need to observe the rule of law and to build institutions. NGOs should involve relevant experts in formulating constructive recommendations on what should be done to decrease corruption and to advocate for change.

The private sector must accompany the anti-corruption impetus of new governments by realizing its role in implementing a zero corruption tolerance policy.