Criteria for Good Governance in the Defence Sector

International Standards and Principles

Difi guidance 2015:1
ISBN 978-82-7483-122-3

Direktoratet for forvaltning og IKT

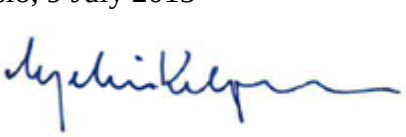
Preface

Difi – the Norwegian Agency for Public Management and e-Government – has during the past decade been actively involved in Security Sector Reform (SSR) and Building Integrity (BI) in a number of countries in South Eastern Europe, in cooperation with the Norwegian Ministry of Defence and the Norwegian Ministry of Foreign Affairs. The objective has been to assist local Ministries – Ministries of Defence in particular – develop modern, efficient and effective security institutions and armed forces, characterized by accountability, transparency and high standards, in line with international principles and standards for good governance.

The current report, *Criteria for Good Governance in the Defence Sector – International Standards and Principles*, was developed in order to provide assessment guidelines in the systematic evaluation of the integrity systems of nine countries – eight of which take part in NATO's BI Programme for South Eastern Europe: Albania, Bosnia & Herzegovina, Bulgaria, Croatia, Macedonia, Montenegro, Romania, and Serbia. Kosovo was added on a Norwegian bilateral basis. The assessment of the defence sectors in the countries concerned was carried out by Senior Adviser Svein Eriksen at Difi, in close cooperation with local experts, local ministries, and the Norwegian Ministry of Defence. While the latter has been responsible for the overall project, Difi was commissioned as the executive agent.

The nine country reports from the project summarizes each needs analysis with a focus on the gaps between the situation at the time of the mapping (2013-2014) and the international standards and principles used as baselines. I sincerely hope that these findings will assist the countries concerned in their continued reform process and help them in establishing defence sectors with a high degree of integrity, to the benefit of their own populations and governments and the international community. For the substantive results from the mapping and subsequent gap analyses, I refer to the country reports.

Oslo, 9 July 2015



Ingelin Killengreen
Director General

Abbreviations and acronyms

ACB(s)	Specialised anti-corruption body(ies)
ACS(s)	Anti-corruption strategy(ies)
CHU	Central harmonisation unit
DCAF	The Geneva Centre for the Democratic Control of Armed Forces
FOIA	Freedom of Access to Information Agencies
GRECO	The Group of states against corruption
HRM	Human resources management
IG(s)	Inspector General(s)
INTOSAI	The International Organisation of Supreme Audit Institutions
IPAP	Individual Partnership Action Plan
IPU	The Inter-Parliamentary Union
MoD	Ministry of Defence
PIFC	Public Internal Financial Control
SAI(s)	Supreme audit institution(s)
UNCAC	The United Nations Convention Against Corruption
TI	Transparency International

Content

1 Introduction

Fostering integrity and reducing corruption are important elements in building state institutions and promoting democracy based on the rule of law. Extreme manifestations of corruption are incompatible with and undermine democratic systems of government. Moreover, corruption weakens the defence and security capabilities of every country and reduces trust and acceptance of the military in general. The nature of the defence sector – not least its size, its privileged access to classified information and weapons supplies and the ingrained culture of secrecy – all make the sector susceptible to administrative and political malpractices such as corruption, abuse of power and even co-optation by organised crime. According to Transparency International, defence is perceived as a government sector where corruption is widespread.[1]

Since its inception, NATO has emphasised that the Alliance is a community of values committed to the principles of individual liberty, democracy, human rights and the rule of law. The same values and principles underpin NATO's Partnership-for-Peace Programme and other partnership programmes. Potential new member states are expected to conform to these basic principles. The development of a programme to combat corruption in the defence sector is increasingly seen as vital to building efficient and transparent defence institutions promoting democracy and the rule of law. Despite the importance of this concern, there have been few, systematic, in-depth country-specific analyses of factors that cause or create risks of corruption/unethical behaviour in the defence sector.

The first needs analysis regarding countries of South Eastern Europe was established around 2011. The project was developed in cooperation with representatives of NATO International Staff (NATO IS) and Transparency International UK (TI). The choice of analytical approach has also benefited from discussions with and suggestions from representatives of the OECD anti-corruption network for Eastern Europe and Central Asia, SIGMA (Support for Improvement in Governance and Management), and GRECO (Group of States against Corruption). The project has been implemented within the context of the NATO Building Integrity Initiative (BI) that was established in 2007 and became operational from 2008. The second phase of the BI – launched in 2010 with the support of Norway, Belgium, Poland, Switzerland and the United Kingdom –concentrated on enhancing and adjusting existing approaches and instruments, in addition to consolidating and mainstreaming achievements to date. It incorporates the development of practical tools aimed at reducing the risk of corruption in NATO-led operations, including support for the implementation of the NATO Afghan First Policy, and a tailored Building Integrity Package for South Eastern Europe. The Norwegian project of which this report is an integral part was conceived as a first step in the proposed

[1] In a recent study, defence is ranked 10th on the list of 19 industrial sectors where bribes to public officials are expected to be paid (1 is least and 19 most corrupt). Bribe Payers Index Report 2011, available at: http://www.ey.com/Publication/vwLUAssets/EY-Transparency-International-Bribe-Payers-Index-2011/$FILE/EY-Transparency-International-Bribe-Payers-Index-2011.pdf

NATO programme for integrity building in South Eastern Europe – within the framework of NATO BI.

This document was prepared in order to give assessment guidelines for the needs analysis conducted in South Eastern Europe, and examines international standards and criteria for good governance in the defence sector. The crucial first step in needs analyses is to identify the prevailing international normative standards for good governance before examining to what extent these standards are institutionalised in the country concerned, and before looking for possible measures to address the gaps discovered. As this document introduces the background for and the content of international standards and principles for good governance in the defence sector, we hope it may serve as a guiding document for all others who want to conduct similar needs analyses. We also hope that the report may prove useful for the practical application of NATO's Self-Assessment Questionnaire and Peer Review Process. That process would benefit from applying a common set of consolidated benchmarks as a basis for recommendations. This report may serve that purpose.

2 Purpose and scope

2.1 Purpose

An important starting point for needs analyses is the recognition that the development of pro-integrity policies must be based on the best possible understanding of the problems and challenges that exist. This view is consistent with strong recommendations from several international organisations, see textbox 1 below.

Textbox 1 The need for evidence-based policies[2]

> "Effective anti-corruption responses cannot be designed without a thorough assessment of the problem: corruption is a symptom of ineffectiveness of institutions, system gaps or failures. Proper *diagnostic research* is needed to identify and understand the spread or concentration of corruption within a system (a single organisation or a system of organisations), the specific forms that it takes, and the vulnerability of systems and processes to corruption."

The purpose of the needs analyses was twofold:

- To identify factors that currently cause or create risks of corruption/unethical behaviour in the defence sector.
- To inform the design of future projects and policies to address the identified risk factors.

The aim of the building integrity programme for South Eastern Europe of which the needs-analyses formed key parts is to contribute towards reducing corruption in the defence sector of the participating nations by promoting good practices, strengthening transparency, accountability and integrity. Reducing the risk of corruption could also have an impact on the requirements of NATO and the EU for membership in their respective organisations and on the nations' motivation to prepare for membership.

2.2 Scope

The needs analyses identified:

- normative standards/guidelines/benchmarks/ regarding impartiality and accountability in the defence sector (see definition of *corruption/unethical behaviour*, p. 5)
- the extent to which these standards, etc., are institutionalised in the countries in question
- major gaps (between the normative standards and their actual extent of institutionalisation) and possible measures to address them.

[2] UNDP (2011), "Practitioners' Guide: Capacity Assessment of Anti-Corruption Agencies", p. 71.

The needs analyses covered eight countries that had committed themselves to participate in the NATO BI Programme for South Eastern Europe:

- Albania
- Bosnia and Herzegovina
- Bulgaria
- Croatia
- The former Yugoslav Republic of Macedonia (FYROM)[3]
- Montenegro
- Romania
- Serbia

In addition and through a bilateral agreement, a similar needs analysis has been conducted in Kosovo, in parallel with the work conducted in the other countries.

Mapping in all countries and the follow-up analyses of gaps between the situation on the ground and the international standards and principles contained in this report started in the autumn of 2012 and were basically concluded by the end of 2014.

[3] Turkey recognises the Republic of Macedonia by its constitutional name.

3 Design and methodology

3.1 Definitions

The needs analyses focus on risks of corruption/unethical behaviour in *ministries of defence* and other defence sector organs that are relevant in relation to the institutional arrangements and high risk areas mentioned below (a.– i.). By "*corruption/unethical behaviour*", we mean practices within an institution that compromise that institution's capacity to perform its functions in an impartial and accountable manner.

3.2 A holistic approach

The point of departure for the gap analysis is the observation that a holistic approach to security sector reform is increasingly called for.[4] Pro-integrity reforms internal to the defence sector should be set in a wider reform perspective including appropriate instruments within civilian policy sectors. Therefore, the proposed needs analysis will consider defence sector institutions as part of and embedded in their environment, and take into account – to the extent necessary – legal and administrative arrangements cutting across national systems of public governance. There are several reasons for this approach.

Firstly, key challenges facing the defence sector are often located outside the sector itself and relate to wider questions of administrative capacity and political governance. This is clearly the case, for instance, when the general legal frameworks that are central to pro-integrity reforms (frameworks regarding, *i.a*. human resources management, public procurement, conflicts of interest, and freedom of access to information) apply to all state administrative bodies including MoDs. This state of affairs makes it difficult or impossible to make effective pro-integrity reforms in individual ministries such as the MoDs without also reforming the general civil service arrangements. The experience of two decades of public administration reform across the Balkans clearly supports this argument.[5]

Secondly, NATO is not only a defence organisation but – as we have already observed – a unique community of universal, non-defence-specific values, namely: democracy, individual liberty, the rule of law, and human rights. These values must be the guiding principles for all major pro-integrity reforms and must be equally reflected in the work of all ministries, public agencies, and general public service arrangements. Thus, the basic principles of pro-integrity policies of defence sector institutions should not be significantly different from those relating to the public sector in general.

Thirdly, a system whereby the general public service arrangements do *not* apply to the MoD – where there are special regulations for individual ministries – entails significant risks. Sectorised, fragmented legislation may create

[4] See for instance OECD (2007), *The OECD DAC Handbook on Security System Reform (SSR) Supporting Security and Justice*, Paris: OECD.
[5] SIGMA (2004), "Public Administration in the Balkans: Overview," Paris: OECD/SIGMA.

confusion about what rules apply, may cultivate the idea that state officials serve particular organisations and not the state as a whole and may provide fertile ground for the development of undesirable subcultures and 'states within the state'. In Balkan countries, the practice of exempting individual ministries from the overall civil service legislation has the consequence – whether intended or not – that the affected ministries do not follow or *have* to follow generally accepted European principles of public administration.

3.3 Emphasis on eight types of checks and balances and two high risk areas

We have studied *prevention of* and not *criminalisation of/legal action against* corruption/unethical behaviour. However, these two elements are closely related. The possibility to successfully prosecute allegations of corruption depends significantly on the existence of clear preventive arrangements, not least rules about what behaviour is unacceptable and what institutional arrangements must be in place in public bodies.

To a large extent the needs analysis concentrates on checks and balances in the public sector; *i.e.*, mechanisms set in place to reduce mistakes or improper behaviour. Checks and balances imply sharing of responsibilities and information so that no person or institution has absolute control over decisions. Generally, in countries included in the needs analysis, there is a potential for further strengthening the mechanisms for separation of powers and transparency. Currently, too much power may be concentrated in too few hands and exercised in arenas that are closed to outside scrutiny. Power concentration may be a major, and indeed *the* major corruption risk factor in countries where there are weak traditions supporting the notion that the constitutional order, the rule of law, and the role of professional administration are designed to constrain arbitrary use of state power. Consequently, a system of countervailing powers and transparency promotes democratic checks on corruption/anti-integrity behaviour.

We look at the integrity-promoting (or integrity-inhibiting) properties of the following main checks and balances:

a. Parliamentary oversight
b. Anti-corruption policies
c. Specialised anti-corruption bodies
d. Arrangements for handling conflicts of interests
e. Arrangements for transparency/freedom of access to information
f. Arrangements for external and internal audit, inspection arrangements
g. Ombudsman institutions

In addition to examining the checks and balances, the gap analysis focuses on two high-risk areas susceptible to corruption/unethical behaviour:

h. Public procurement (or alternatively: disposal of defence assets)
i. Human resources management (HRM)

Both areas are of particular importance in the defence sector. Defence sector institutions are responsible for large and complex *procurements* that may facilitate corruption. Flawed acquisition processes may lead to questionable government decisions which, in serious cases, may spur apprehension in neighbouring countries and, ultimately, regional instability. However, due to the financial crisis most of the countries covered by the proposed project have so tight public budgets that there is little funding available for investments and acquisitions. At the same time a number of the countries have a too large and inappropriately equipped defence sector. In these countries it is relevant to look at arrangements for the *disposal* of military resources.

In most countries, the MoD is one of the largest ministries in terms of number of staff and is responsible for a large number of employees outside the ministry. *Human resources* are central to the quality of performance of defence sector bodies. For instance, recruitment patterns creating dysfunctional dependency relationships between managers and employees can easily result in the latter losing their professional independence, which may in turn translate into corruptive/unethical behaviour.

3.4 The basis for the assessment: international normative standards

The analytical approach employed in this needs analysis follows closely the methodology that was recently used to study one of the domains of integrity mentioned above (a-i): human resources management. The study was carried out under the auspices of SIGMA and covers most of the countries contained in our analysis.[6] A similar methodology was also used in a 2012 report on another topic dealt with in our study: parliamentary oversight in Western-Balkans countries.[7]

The first task of the gap analysis is to identify a normative basis regarding our nine domains of integrity building. This normative basis will serve as a benchmark for assessing the actual situation regarding pro-integrity policies in the nine countries included in the project. The needs analysis will draw on and reflect concepts and standards provided by international organisations of which the nations included in the analysis are already members or are in the process of applying for membership: *i.a*. the EU, the OECD (including SIGMA); the OSCE, the Council of Europe and the UN.

The normative basis will mainly concern general principles for promoting defence sector integrity and not so much questions about how these principles should be implemented. When it comes to practical issues of implementation, individual countries should have substantial leeway to develop solutions adapted to national traditions etc. The diversity of institutional frameworks in

---

[6] Meyer-Sahling, Jan (2012), "Civil Service Professionalism in the Western Balkans", *SIGMA Paper* no. 48.

[7] Klopfer, Franziska, Douglas Cantwell, Miroslav Hadžić, and Sonja Stojanović (eds.) 2012 *Almanac on Security Sector Oversight in the Western Balkans,* Belgrade: the Belgrade Centre for Security Policy and Geneva Centre for the Democratic Control of Armed Forces.

European countries indicates that different institutional solutions may be assumed to support the same normative principles as long as a minimum of institutional arrangements are in place.

3.5 Assessment focus: the institutionalisation of normative standards

After the normative standards have been developed, the next task of the gap analysis will be to analyse to what *width* and *depth* the standards are institutionalised in the defence sector. The *width* refers to the nine domains of integrity building, discussed above (a-i). The maximum width includes all ten domains; the minimum width includes few or in theoretical cases none of them. The *depth* relates to the following three levels of institutionalisation:

1. *The legal framework, i.e.,* to what extent are the normative standards regarding the ten domains of integrity-building mechanisms reflected in domestic legal acts?
2. *The implementation of the normative standard, i.e.,* to what extent and how do the normative standards actually influence organisational arrangements, work practices and staffing patterns?
3. *The internalisation of the normative standard, i.e.*, the perception of defence sector officials concerning the extent to which the normative standards are known, accepted, and actually adhered to.

There may be different relationships between the three levels of institutionalisation: they may be mutually supportive or counteract each other.[8] The extent of congruence will significantly influence the efficiency and sustainability of integrity-building policies. When there is a high level of fit between the three levels, *i.e.* when the legal framework reflects the desired normative standards and is supported by rule implementation and rule internalisation, integrity-building policies are firmly rooted and effective (maximum depth of institutionalisation). If on the other hand a legal framework that is in conformity with the desired normative standards deviates substantially from the norms held by people acting within an institution, the risk is high that pro-integrity policies exist only on paper (minimum depth of institutionalisation). The situation may be more promising – not least in terms of future reforms – if desired normative standards are internalised or supported by officials even if the implementation may be inadequate.

The analysis of the width and depth of integrity-building policies will hopefully give us a sufficient understanding of where and for what reasons the risks of corruption/unethical behaviour are particularly high, and the kinds of measures that should be implemented to redress the situation. The gap analysis will

[8] The hypotheses set forth in this paragraph following closely Meyer-Sahling, Jan (2012), "Civil Service Professionalism in the Western Balkans", *SIGMA Paper* no. 48, which may be derived from a number of studies of post-communist transitions in Eastern Europe see for instance Offe, Claus (1997), "Cultural Aspects of Consolidation: A Note on the Peculiarities of Postcommunist Transformations", *The East European Constitutional Review* 6(4); and Savicka, Anna (2004), *Postmaterialism and Globalisation*, Vilnus: Research Institute of Culture, Philosophy and Arts.

discuss possible future measures on the level of individual countries as well as of NATO. We will pay particular attention to the interplay between the domestic reforms and arrangements of the NATO integration process. Two decades of civil service and public administration reform in South Eastern European countries have shown that international organisations – and the presence of a "European perspective" – have promoted reform across the region. It is also true, however, that during the past five to eight years reform efforts, *i.a.* in areas covered by the proposed project, have slowed down and even stagnated in some countries.[9] Therefore, it is time to rethink how international organisations, including NATO, can encourage and guide national reform processes in the best possible ways.

3.6 The data basis of the assessment

The analysis of the fit between integrity-relevant arrangements covering the MoDs on the one hand and the international normative basis on the other will be based on three, perhaps four types of empirical evidence:

a. Study of already available documents in order to assess the formal, legal institutionalisation of the international normative standards, *i.a.* domestic legal frameworks (primary and secondary legislation, and review of internal regulations) covering defence sector officials, governmental and non-governmental reports on developments in the defence sector and civil service systems more generally.
b. Responses to a self-assessment tool developed by NATO in cooperation with, *i.a.* Transparency International ("Building Integrity and Reducing Corruption Risk in Defence Establishments"). The questionnaire will provide information on organisational arrangements, work practices and staffing patterns in defence sector institutions. To fully support the purpose of the current project proposal the NATO questionnaire will be extended with a limited number of additional questions.
c. Interviews with senior officials, members of parliament, and outside observers of the defence system (academics, representatives of NGOs) in order to have a balanced picture of the state of pro-integrity policies in the defence sector and more generally in the wider public administration. The interviews are relevant for the assessment of all three levels of institutionalisation.

In addition we will assess the feasibility of implementing a survey among managerial and non-managerial civil servants of the MoDs and other relevant defence sector officials. The survey will map the respondents' understanding of, attitude towards and actual experience with the international normative standards.

The following chapters (5–12) provide guidelines for the collection and analysis of data that are described under a) and c) above and that relate to the ten themes (eight checks and balances, and two high-risk areas) which are briefly discussed

[9] See Meyer-Sahling (2012.)

on pp. 6 and 7 in this report. The following chapters are organised in the same way. They describe:

- why the relevant topic is important for building integrity
- the normative standards that apply in each topical area
- the questions that gap analysis will seek to address.

4 Parliamentary oversight

4.1 Why is parliamentary oversight important to building integrity?

Arrangements for parliamentary oversight are vital to building integrity for several reasons.

Parliamentary oversight is one of the key democratic means of holding the government to account for its actions. Since security sector organisations use a substantial share of the state's budget, it remains essential that parliament monitor the use of the state's scarce resources both effectively and efficiently. Moreover, it falls to parliament to see to it that the laws do not remain a dead letter, but are fully implemented.

Parliamentary oversight may prevent concentration and abuse of executive power, including corrupt and other forms of unethical behaviour. A state without parliamentary control of its security sector, especially the military, should, at best, be deemed an incomplete democracy or a democracy in the making.

Concerning the defence sector specifically, parliamentary oversight may enhance public awareness of the defence sector and thus improve the opportunities for an informed and open debate on defence issues. Parliamentarians are in regular contact with the population and are well-placed to ascertain their views. They can subsequently raise citizens' concerns in parliament and ensure that these concerns are reflected in security laws and policies.

4.2 Parliamentary oversight: the normative standard

4.2.1 Sources of norms

No internationally agreed standards in the field of democratic and parliamentary oversight exist, since security and defence are regarded as falling into the domain of national sovereignty. Civil-military relations are not dealt with in any detail by the *acquis communautaire*. However, the European Union has taken the position that candidate states must organise their civil-military relations so as to comply with the political criteria for accession adopted by the Copenhagen European Council in 1993. Some regional standards exist, such as the OSCE Code of Conduct[10] asserting the duty of states to *i.a.*:

- maintain armed forces under effective democratic control through authorities vested with democratic legitimacy (paragraphs 20 and 21)

[10] OSCE, Code of Conduct on Politico-Military Aspects of Security, adopted at the 91st Plenary Meeting of the Special Committee of the CSCE Forum for Security Co-operation in Budapest on 3 December 1994.

- ensure legislative approval of defence budget and transparency and public access to information related to the armed forces (paragraph 22).

The Inter-Parliamentary Union (IPU) and the Geneva Centre for the Democratic Control of Armed Forces (DCAF) emphasise *i.a.* the following principles for democratic civil-military relations:[11]

- The state is the only actor in society that has the legitimate monopoly of force; the security services are accountable to the legitimate democratic authorities.
- The parliament is sovereign and holds the executive accountable for the development, implementation and review of the security and defence policy.
- The parliament has a unique constitutional role in authorising defence and security expenditures.
- The parliament plays a crucial role with regard to declaring and lifting a state of emergency or the state of war.
- Principles of good governance and the rule of law apply to all branches of government and therefore also to the security sector.

In this chapter we place particular emphasis on the IPU/DCAF recommendations.

4.2.2 Constitutional and legal powers

Parliaments can normally use a wide range of powers when overseeing the defence sector, *i.a*. the following:

- **General Powers**
    - To initiate legislation
    - To amend or to rewrite laws
    - To question members of the executive
    - To summon members of the executive to testify at parliamentary meetings
    - To summon military staff and civil servants to testify at parliamentary meetings
    - To summon civil experts to testify at parliamentary meetings
    - To obtain documents from the executive
    - To carry out parliamentary inquiries
    - To hold hearings

- **Budget Control**
    - Access to all budget documents
    - The right to review and amend defence budget funds

[11] IPU/DCAF (2003), "Parliamentary oversight of the security sector: Principles, mechanisms and practices", Geneva, p. 24.

- The right to approve/reject any supplementary defence budget proposals

- **Procurement/asset disposal/arms sale, arms transfer**

  - Obligation of the executive to fully inform parliament on decisions regarding procurement/asset disposal/arms sale, arms transfer
  - The right to approve/reject contracts
  - Review of the following phases of procurement:
    - Specifying the need for equipment
    - Comparing and selecting a manufacturer
    - Assessing offers for compensation and off-set

- **General Defence and Security Policy: the right to approve/reject**

  - Security policy concept
  - Crisis management concept
  - Force structure
  - Military strategy/doctrine

- **Defence personnel, management and organisation**

  - The right to approve/reject the personnel plan
  - The right to fix ceilings for manpower
  - The right to approve/reject or the right to be consulted on the highest military appointments (such as chief of staff)
  - The right to consider the internal organisation of the defence sector

As constitutional provisions have the highest legal status it is important to inscribe parliamentary powers regarding the security sector in the constitution. Constitutions cannot be easily changed; any such reform generally requires a qualified majority in parliament. Therefore the constitution represents an effective way of protecting the power of the parliament in that sensitive field. Such powers may be further reinforced by specific legislation and through rules of parliamentary procedure.

It is crucial for parliament to receive accurate and timely information on the government's intentions and decisions regarding security issues and the security sector. The parliament will not have a strong case if the government briefs it only after having reached a final decision. In such situations, the parliament will be confronted with a 'fait accompli' and will have no other alternatives than to approve or reject the government's decision.

4.2.3 Parliamentary mechanisms applied to the defence sector

All democratic systems provide parliaments with a variety of means to retrieve information for controlling policy, supervising the administration, protecting the individual, or bringing to light and eliminating abuse and injustice. The

three common legal possibilities for parliaments to obtain information from the government are:

- parliamentary debates
- parliamentary questions and interpellations
- parliamentary scrutiny.

Parliamentary debates on security issues provide a key opportunity for exchanging opinions and gathering essential information about facts and the government's intentions. Generally speaking, parliamentary debates can occur in five types of situations:

- following the presentation by the executive of its annual defence budget proposals
- further to official or unofficial statements by relevant ministers such as the minister of defence or the minister of foreign affairs
- in connection with a national defence review, the presentation of a defence white paper or any other major national defence policy
- in connection with the government's programmes, which are mainly issued after an election
- any major security concern or disaster.

Parliamentary questions and interpellations relating to security, are one of the most widely used mechanisms to elicit concrete information about the work of the government and possibly to expose maladministration/abuses in governmental bodies and seek reorientation of governmental policies. Questions could be posed in writing to the government or orally at special parliamentary sessions. The following factors appear to contribute to the effectiveness of parliamentary questions:

- The possibility for parliamentarians to present complementary questions whenever they are not satisfied with the answer or need further clarifications.
- The possibility for parliamentarians to initiate a debate on issues raised during question hour.
- The will of members of parliament to avail themselves of the procedural possibility to ask questions.
- The possibility for the public to attend parliamentary question time, or follow it on radio or television.
- The publication of the questions and answers in documents accessible to the public.

Either as part of or as supplement to the mechanisms mentioned above, parliaments may **scrutinise** the work of the executive by reviewing reports prepared by the government or independent public bodies and by conducting special inquiries. The core powers of parliaments normally include the power to:

- choose the topic and scope of the parliamentary inquiry
- carry out visits to army bases and other premises of security services

- collect all relevant information, including classified and top secret documents, from the presidency, public administration or the general staff
- take evidence under oath from members of the presidency, public administration or the military as well as civil society
- organise public or closed hearings.

4.2.4 Institutional and political factors

A well-developed committee structure is crucial if the parliament is to exert real influence on the executive. The parliamentary oversight of the defence sector involves not just one committee but several committees which may be found under different names in different parliaments (and may sometimes have their mandates combined). For the purpose of this assessment the following committees are of particular interest:

- **Defence committee**, which generally deals with all issues related to the defence sector
- **Budget or finance committee**, which has a final say on the budget of all defence sector organisations; possibly the public accounts committee which reviews the audit report for the entire national budget including the defence budget
- **Committee or sub-committee for the intelligence services and related matters**, which often convenes behind closed doors
- **Committee on industry and trade**, which is especially relevant in matters of arms procurement and trade
- **Anti-corruption committee**, which deals with integrity related issues for all state institutions, including defence sector bodies

The level of powers and expertise available to a committee will be crucial to perform its mandate effectively. Possible key functions of a parliamentary committee on defence issues may be:

- **Security policy**
    - To examine and report on any major policy initiative announced by the ministry of defence
    - To periodically examine the defence minister on his discharge of policy responsibilities
    - To keep under scrutiny the ministry of defence's compliance with the freedom of access to information legislation, and the quality of its provision of information to parliament by whatever means
    - To examine petitions and complaint from the military personnel and civilians concerning the security sector.

- **Legislation**
    - To consider and report on any draft legislation proposed by the government and referred to it by the parliament

- To initiate new legislation by requesting the minister to propose a new law or by drafting a law itself.

- **Expenditure**

  - To examine and report on the main estimates and annual expenditures of the ministry of defence
  - To consider each supplementary estimate presented by the ministry of defence and report to parliament whenever this requires further consideration
  - To consider audit reports concerning the use of funds in the defence sector and whenever necessary
    - report to parliament
    - call upon the minister to take steps to address possible malpractices
    - order the competent authority to order further audits.

- **Procurement/asset disposal/arms sale, arms transfer**

  - To examine and report on decisions/planned decisions regarding procurement/asset disposal/arms sale, arms transfer
  - Examine and report on proposed contracts
  - Review of the following phases of procurement:
    - Specifying the need for equipment
    - Comparing and selecting a manufacturer
    - Assessing offers for compensation and off-set.

- **Defence personnel, management and organisation**

  - To consider and if appropriate to report on each major appointment made by the relevant executive authority (leading military commanders, top civil servants)
  - To review and report on the personnel plan and ceilings for manpower
  - To consider the internal organisation and management of the defence sector, if relevant through external bodies[12] relating to parliament, and draw the attention of the parliament to possible malfunctioning.

Effective parliamentary oversight of the security sector requires expertise and resources within the parliament at its disposal. Key issues to be taken into account in this respect are: the number, capacity level and stability of the staff; the ways in which they are recruited, the research capacity and its nature (specialised versus general; separate versus part of the broader parliamentary research unit); data access and relevant support documentation (capacity to

[12] *E.g.* the ombudsman, the commissioner of freedom of access to information, the anti-corruption agency.

obtain and reproduce it); capacity to call on experts; capacity to hold hearings and to carry out inquiries.

Another key element for effective parliamentary oversight is the existence of a **political will/ability** of the parliamentarians to use the mechanisms at their disposal. Even if parliamentary oversight is adequately regulated and parliamentary bodies/individual MPs have sufficient resources and expertise at their disposal, effective parliamentary oversight is not possible without strong political support. The political will/ability to effectively oversee the security services are determined by various factors, including the following:

- **Party discipline**: as it is in the interest of the parliamentarians of the governing party to keep the executive in power, they have a tendency to refrain from public criticism of the executive. Thus, the specific mechanisms to hold ministers/the government accountable largely become ineffective because of the dominance of party loyalty over the formal tasks of parliamentarians. However, features of the party/parliamentary/political system may strengthen or weaken MPs dependency on the party leadership and hence their opportunities and inclination to question the leadership's decision.
- **Political interest**: arguably, in most countries voters are not much interested in security issues. Moreover, politicians will be keener to discuss future-oriented matters than to go into past issues that may have lost their topical interest. Therefore, parliamentarians may lack motivation to devote much attention to checking the government's work on defence and other matters.
- **Security considerations** (real or imagined) may make parliamentarians who are responsible for defence issues reluctant to disclose, share and openly discuss findings and observations they have made.

As a result of such factors, parliamentary accountability mechanisms will normally be applied rather passively. It is only when parties anticipate that such behaviour would inflict damage on their electoral prospects that they are ready to hold their members in public office accountable.

4.3 Parliamentary oversight: questions to be addressed in the needs analysis

4.3.1 Questions regarding constitutional and legal powers

1) What powers does the parliament have to oversee the defence sector? (*Guidance for assessors: See above 4.2.2 general powers, budget control, procurement/asset disposal/arms sale arms transfer, general defence and security policy, and defence personnel management and organisation).*
2) What is the normative level of the legal regulation establishing and describing these powers (e.g. the Constitution, primary legislation, rules of procedure of Parliament)?

3) What kind of information does the MoD normally provide to the Parliament with regard to a) procurements carried out in the defence sector, b) defence asset disposals, and c) arms sales, arms transfers?
4) Is the information mentioned under question 3) considered sufficient to identify possible malpractices?
5) Overall, does parliament receive accurate and timely information on the government's intentions regarding the defence sector? *(Guidance for assessors: This question relates to budget control, general defence and security policy, and defence personnel management and organisation, see above 4.2.2 for further explanation of this question).*

4.3.2 Questions regarding parliamentary mechanisms in the defence sector

6) What are the main mechanisms for parliament to obtain information from the government? *(See above 4.2.3 parliamentary debates, parliamentary questions and interpellations, parliamentary scrutiny).*
7) What is the normative level of the legal regulations establishing and describing these mechanisms?
8) Is it possible for parliament to use questions and scrutiny effectively? (*See above 4.2.3 as regards factors that may contribute to the effectiveness of these mechanisms).*
9) To what extent are the mechanisms actually used to oversee the defence sector? If possible, describe the extent of actual use during the past two years and issues that were raised.
10) Did the parliament's use of the mechanisms mentioned above (4.2.3) lead to concrete recommendations/instructions to the government?
    a. If yes, was the government's response satisfactory?

4.3.3 Questions regarding institutional and political factors

11) Which committees (if any) are in charge of overseeing the defence sector? *(See above 4.2.4 as regards possible relevant committees).*
12) Are their responsibilities sufficient for effectively overseeing the defence sector? *(See above as regards possible responsibilities: security policy, legislation, expenditure, procurement/asset disposal/arms sale, arms transfer, defence personnel, management and organisation).*
13) How deep do the committees go in their oversight? (simply reviewing the government reports they normally receive, requesting additional reports, preparing their own written comments to the government reports, preparing their own reports, conducting field visits, investigations etc.)
14) What are the numbers and qualifications of expert staff (if any) assigned to the committees?
15) How were members of the expert staff selected? *(Guidance for assessors: try to establish the extent to which recruitment was merit based, with vacancies publicly advertised and candidates selected after a competition-based procedure).*
16) Which law (if any) regulates the way in which the expert staff are employed and their conditions of service?

17) Are the resources – including staff resources – allocated to the committees considered sufficient to effectively oversee the defence sector?
18) Can party discipline or other party/political factors reduce the possible inclination of members of parliament – especially those belonging to the government faction – to effectively oversee the defence sector?
19) Overall, is Parliament proactive and effective in performing its oversight over the defence sector? *(Guidance for assessors: Here we are concerned with the nature of the interaction between the government and parliament: Does the parliament express its requirements/recommendations explicitly and in writing? Are the requirements/recommendations formally sent to the government? Does the government provide timely and accurate answers?)*
20) Have the media, the civil society, international organisations or others raised serious concerns about general arrangements for parliamentary oversight/actual practices concerning parliamentary oversight in the defence area?
    a. If yes, what was the nature of these concerns?
    b. If applicable, how have political authorities (if at all) responded to such concerns?
21) Are there specific proposals for the arrangements of parliamentary oversight?

Legislation to be consulted:

Constitution, Law on Parliament (if applicable); Parliament's Rules of Procedure.

5 Anti-corruption policies

5.1 Why are anti-corruption policies important to building integrity?

Many reports and studies on corruption in the countries covered in this study point out the "implementation gap" as the most acute corruption-related problem, which is to say that the legislative framework is usually in relatively satisfactory shape but practice is something else.

This gap is largely attributed to the inadequacy of anti-corruption policies. This in turn damages the reputation of politicians as they appear not to be interested in fighting corruption while they need to provide leadership in this effort.[13] Arguably, in countries where levels of corruption are high, it may be particularly necessary to develop special anti-corruption policies. Such policies – in the form of programmes or strategies – may give a clear message about governments' priorities, and thus be tools for governments to communicate about their anti-corruption work and to co-ordinate various activities of the sectorial ministries and other stakeholders.

This chapter addresses the nature and adequacy of such strategies or programmes.

5.2 Anti-corruption strategies: the normative standard

5.2.1 Political party programmes and government programmes

In south-eastern European countries, international organisations and donor agencies were among the first to raise the issue of corruption. They often provided powerful incentives for change through assistance programmes or conditions for membership (*e.g.* EU accession process). While such incentives and support can be very compelling, external leadership of the anti-corruption agenda alone is not sustainable in the long run; it must be supported by domestic political forces.[14]

The programmes of political parties, government programmes, and politicians' statements, media and civil society are not at the centre of interest of international organisations where the countries in question aspire for membership. These documents and statements may more accurately reflect politicians' true priorities and concerns than policies that are developed on the initiative and with guidance from international organisations.

5.2.2 Anti-corruption strategies

According to the Istanbul anti-corruption action plan, "An anti-corruption strategy is a policy document which analyses problems, sets objectives,

[13] Kahvedžić, Nedim and Samir Lošić (2010), "Corruption in Bosnia and Herzegovina: Causes, Consequences and Cures", Master thesis in Economics, The University of Linköping, p. 2.

[14] See for instance OECD (2008), "The Istanbul Anti-Corruption Action Plan: Progress and Challenges."

identifies main areas of action (*e.g.* prevention and repression of corruption and public education) and establishes an implementation mechanism. A strategy can be supported by an action plan which provides specific implementation measures, allocates responsibilities, establishes schedules and provides for a monitoring procedure. Strategies and action plans can be adopted by parliaments, presidents or heads of governments as national policies. Anticorruption strategies are important statements of political will and policy direction. They can provide a useful tool for mobilising efforts by government and other stakeholders, for structuring the policy development process, and for ensuring monitoring of policy implementation."[15]

There are no international agreements that explicitly require countries to develop anti-corruption strategies. However, according to the United Nations Convention Against Corruption (UNCAC), "Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability."[16]

The Group of States against Corruption (GRECO) has recommended for a number of countries that national anti-corruption strategies be developed.[17]

Indirectly, the UNCAC provides guidance on the content and design of anti-corruption strategies. Guidance on the preparation of such documents has also been prepared by the OECD[18], GRECO[19] and Transparency International (TI), *i.a.* on the basis of evaluations of a number of national anti-corruption strategies.[20]

According to Transparency International[21] Anti-corruption strategies (ACSs) should:

- have local ownership
- meet local needs
- be comprehensive and balanced
- include arrangements for implementation and monitoring

and, perhaps most importantly:

- be driven by political will.

---

[15] *Ibid.* p. 19.
[16] UNCAC, article 5.
[17] GRECO, *Lessons learnt from the three Evaluation Rounds (2000–2010) Thematic articles.*
[18] OECD (2008), "The Istanbul Anti-Corruption Action Plan: Progress and Challenges."
[19] GRECO, footnote 17.
[20] See for instance, Transparency International (2006), "Anti-Corruption policy in Armenia", Yerevan.
[21] See *ibid.*, footnote 20.

More specifically TI observes:

"Donors-driven reforms fail, when they lack **local ownership**, when the society and the government do not accept the reforms. Societal attitudes towards corruption and public support to anti-corruption reforms are vital for ensuring the sustainability and consistency of reforms. If the government involves the civil society representatives in the development, implementation and monitoring of ACSs, then it may ensure real public participation. […]

[ACSs have] to meet **local needs** and take into account the country specifics and realities. […] a diagnostic analysis to identify the level and types of corruption prevalent in a given country should be made, along with an assessment of societal attitudes and behavioural patterns. Findings of both assessments should then be viewed against the country's overall politico-economic situation. […]

Widespread corruption must be tackled [**comprehensively**] through targeting as many institutions and levels as possible and feasible. However, this approach should be **balanced**, taking into account available resources and capacity. […] Meanwhile, a balance shall be also provided between preventive, punitive and public support measures. […]

ACSs must be realistic in terms of the resources and capacity available in the country for its implementation. Typically, governments in transitional economies rely on the only major source of funding – international assistance, which cannot be guaranteed as a long-term means of support and thus is not sustainable. Therefore, it is critical to begin with measures which can realistically be implemented with capacity already available or that require limited additional resources. However, this should not be used as a valid excuse for not taking real and consistent actions.

Normally, it is very difficult to measure the success or failure of ACSs. Hence, it is essential to have proper **monitoring mechanisms** to track the changes on a regular basis taking into account all factors influencing the reform process."[22]

Extensive experience confirms that **true political will** is one of the most determining factors in ensuring the success of anti-corruption reforms. Most typologies of corruption distinguish broadly between incidental corruption (petty graft, small-scale embezzlement etc.) at one extreme and systemic corruption (large-scale embezzlement, rule skewing and abusive patronage) on the other. There is general agreement that systemic corruption is the most difficult type to deal with successfully. In some countries politicians are in fact a major source of corruption and thus contribute to its systemic nature. Particularly difficult to deal with are reforms that face powerful losers, who are opposed to change and have significant resources to mobilise, and weak winners who would benefit from change but have few resources. According to

[22] *Ibid.*

analysts this is one of the reasons why it is so difficult to mobilise political support to effectively combat "patronage machines".[23]

Political will is not visible and measuring it can only be done indirectly. Possible indicators of the absence or presence of political will to combat corruption (*i.e.* by means of adopting ACSs) are discussed in the textbox below.[24]

Textbox 1 Indicators of political will to fight corruption

- ***Locus of initiative**:* Does the initiative for reform come from the domestic actor that at least nominally is calling for reforms or is the initiative lodged with an external group that has induced or coerced the regime to accept or endorse the anti-corruption issue? The former situation may indicate that reformers themselves perceive corruption as a salient issue whereas the latter may give rise to doubts about commitment and ownership.
- ***Degree of analytical rigour**:* This indicator reflects the extent to which in-depth analyses of *i.a.* corruption and its causes have been utilised to understand the context and causes of corruption. Reformers who have not gone to this analytical step and who for instance advocate clearly insufficient measures, for example discrediting political opponents or purging a few corrupt officials, demonstrate an insufficient willingness to fight to address the problem of corruption.
- ***Mobilisation of support**:* Has the regime adopted a strategy that is participative, *i.e.* that activates the interests of many stakeholders and may ensure shared ownership and sustainability? The assumption is that stakeholders act on the basis of their own interests and that broad participation will increase political commitment for effective anti-corruption policies.
- ***Continuity of efforts**:* Does the regime treat efforts in support of anti-corruption activities as a one-shot endeavor and/or symbolic gesture or are efforts undertaken for the long term? This includes assigning appropriate human and financial resources to the programme and establishing mechanisms to monitor the impacts of anti-corruption reform.

GRECO recommendations on how ACSs should be prepared and implemented are similar to those of TI. Thus, according to GRECO anti-corruption strategies should not amount to mere declarations of intent, "In order to be credible they must be co-ordinated and must comprise definite, measurable objectives. It must be ensured that they are implemented and periodically evaluated and adapted. GRECO has therefore recommended, in certain cases, adopting detailed plans of action and having the strategies and plans of action reviewed and implemented by bodies vested with the authority and the appropriate level of resources for this task."[25] GRECO emphasises that the first prerequisite for satisfactory prevention is an objective assessment of risks.[26]

---

[23] Brinkerhoff, Derick W. (2000), "Assessing political will for anti-corruption efforts: an analytical framework", *Public Administration and Development* 20(3), pp. 239–252, 246.
[24] The presentation in the textbox is based entirely on Kapundeh, Sahr J. (1998), "Political will fighting corruption," in *Corruption & Integrity Improvement initiatives in developing countries,* New York: UNDP, and Brinkerhoff, Derick W. (2000), see footnote 23.
[25] GRECO, *Lessons learnt from the three Evaluation Rounds (2000–2010) Thematic articles,* footnote 8, 9 and 17.
[26] *Ibid.*, footnote 9.

5.3 Anti-corruption policies: questions to be addressed in the needs analysis

5.3.1 Questions regarding political party programmes and government programmes

22) Have major political parties and political coalitions expressed their will to fight corruption, *e.g.* included anti-corruption provisions in party/election programmes and coalition agreements? *(Guidance for assessors: focus on the documents that were prepared in connection with the most recent parliamentary elections).*
23) How are the anti-corruption issues reflected in the recent governmental programme?
24) Is there any minister who is responsible for the development of anti-corruption issues/anti-corruption policies?
    a. If yes, how is this field organised and staffed in the relevant ministry?
    b. Assess the adequacy of the organisational and staffing patterns?

5.3.2 Questions regarding anti-corruption strategies

25) Is there a national anti-corruption policy document?

    a. If yes, please specify if it is a stand-alone programme/strategy or an umbrella document with separate programmes for sectors/ministries and if the defence area is specifically mentioned in the document?
    b. Why has the anti-corruption policy document been adopted? (*Guidance for assessors: put particular emphasis on the role of international pressure/requirements*).

26) Does the policy document have the following elements/chapters:

    a. background chapters on the nature, causes, levels and trends of corruption, and assessment of previous anti-corruption efforts;
    b. objectives and priority areas;
    c. substantive chapters on prevention, criminalisation/law-enforcement, public participation/education;
    d. monitoring, assessment, and adjustment mechanisms and criteria?

27) Does the content of the policy document sufficiently meet local needs and take into account country-specific realities? *(Guidance for assessors: See above 5.2.2 for further explanation of this question).*
28) Does the way in which the policy document was prepared sufficiently ensure local ownership? *(Guidance for assessors: See above 5.2.2 for further explanation of this question).*
29) Is the policy document accompanied by an action plan?
30) If the anti-corruption action plan exists, does it contain the following elements:

    a. specific measures for each objective;
    b. time-frame for the implementation of each measure;
    c. criteria for assessing implementation;
    d. resources specially allocated for the implementation of the action plan;

e. institution(s) responsible for co-ordination, implementation, monitoring, reporting, and adjustments of the action plan?

31) Is there a system of oversight of anti-corruption strategies/policies?
    a. if yes: to what extent and how are the results of oversight activities documented, reported and acted upon?
32) Overall, to what extent does the nature of the anti-corruption policy document seem to reflect a true political will to effectively combat corruption? *(Guidance for assessors: See above 5.2.2 – true political will – for further explanation of this question).*

5.3.3 Questions regarding anti-corruption strategies and the MoD

33) Is there a specialised unit within the MoD responsible for anti-corruption policy implementation and oversight?
34) If a such unit exists
    a. Is it included in the MoD act on systematisation of work positions (or a similar document)?
    b. Is the unit sufficiently resourced?
    c. What is the role of this anti-corruption unit, what is its effectiveness (please describe recent positive changes if any). *(Guidance for assessors: Such a unit may serve as a watchdog for general legislative processes in the ministry, analysing proposed regulations from the point of view of their legality, transparency, prevention of conflicts of interest and good governance. It may also provide independent expert advice to the minister or other officials in cases where the minister has been asked to approve actions beyond existing procedures, such as acquiring armaments/equipment based on urgent operational need (Urgent Operational Requirements, see below chapter 12). The bureau may analyse whether such proposals are legal, economical and well-justified). Anti-corruption units may also play a key role in developing and implementing anti-corruption strategies).*
    d. Does this unit report to the (national level) supervisory institution(s) on the anti-corruption strategy / policy and measures for its implementation?
35) What are the overall results of the implementation of the anti-corruption strategy mentioned above in general and with regard to the defence sector in particular?*(Guidance for assessors: specify the extent to which – if at all – the MoD is implementing the strategy, e.g. if it has developed a separate anti-corruption program for the defence sector.)*
36) Is there a national defence policy document?
37) If such a document exists, does it examine the issue of integrity/corruption? Please assess how thorough and credible this examination is.
38) Are there regular assessments by the Ministry of Defence to assess the areas of greatest corruption risk, how often are they completed, and do they result in mitigation measures?
39) Overall, to what extent do the anti-corruption efforts of the MoD seem to reflect a true political will to effectively combat corruption?

(Guidance for assessors: See above 5.2.2 – true political will - for further explanation of this question).

5.3.4 Overall assessment

40) Have the media, the civil society, international organisations or others raised serious concerns about anti-corruption policies in general and in the defence area in particular?
    a. If yes, what was the nature of these concerns?
    b. If applicable, how has the MoD (if at all) responded to such concerns?
41) What effects (good and bad) has the international community had on the preparation and implementation of ACSs? *(Guidance for assessors: consider the extent of support and credible and consequent application of requirements and conditionalities).*
42) Have there been serious political attempts to upgrade or conversely to reduce the impact of the ACS?
    a. *For assessors in EU member states*: Have there been any noteworthy developments concerning the ACB in the period after accession to the EU? *(Guidance for assessors: please describe briefly possible reform setbacks or reform progress).*

Documents to be consulted:
National anti-corruption strategy; Sectorial anti-corruption strategies.

6 Specialised anti-corruption bodies (ACBs)

6.1 Why are arrangements of ACBs important to building integrity?

For many years the establishment of specialised anti-corruption bodies (ACBs) has widely been considered to be one of the most important initiatives to effectively tackle corruption. However, while often established with great optimism, experience has shown that the effectiveness of anti-corruption agencies has varied greatly from country to country. Lessons learned show that capable anti-corruption agencies tend to be well-resourced, headed by strong leadership with visible integrity and commitment, and situated amongst a network of state and non-state actors who work together to implement anti-corruption interventions. On the other hand, weaker anti-corruption agencies have often been undermined by weak political will, manifested in limited resources and staff capacity.[27]

6.2 ACBs: the normative standard

6.2.1 Sources of norms

The global recognition of ACBs as vital elements in national anti-corruption frameworks is related to the adoption of United Nations Convention Against Corruption (UNCAC) in 2005. Article 6 of UNCAC requires State parties to ensure the existence of bodies dealing with the prevention of corruption.[28]

Textbox 2 UNCAC articles on ACBs

> 1. Each State Party shall in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate, that prevent corruption by such means as: *(a)* Implementing the policies referred to in article 5 of this Convention and, where appropriate, overseeing and coordinating the implementation of those policies; *(b)* Increasing and disseminating knowledge about the prevention of corruption.
> 2. Each State Party shall grant the body or bodies referred to in paragraph 1 of this article the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material resources and specialised staff, as well as the training that such staff may require to carry out their functions, should be provided.

While UNCAC sets some basic principles concerning ACBs as yet no detailed international norms for such bodies have been drawn up. The Convention recognises that there is not just one model that fits all countries. While some countries may centralise corruption prevention efforts in one specialised agency, others distribute those functions among a number of organs.[29]

[27] UNDP (2011), "Practitioners' Guide: Capacity Assessment of Anti-Corruption Agencies."
[28] In addition article 36
[29] UNDP (2011), footnote 2, 10.

The normative framework outlined below is based on UNCAC and UNDP's guide to capacity assessment of ACBs.[30]

6.2.2 Legal framework

The legal framework pertaining to ACBs is of key importance. The ACB needs a clear legal mandate. Any duplication with other institutions should be avoided. The establishment of the ACBs should be provided for by primary law, *i.e*. statute approved by the Parliament. A practice of establishing ACBs by decree or executive decision should be avoided. The law by which an ACB is created should as a minimum regulate its competences, and organisational and financial independence.

6.2.3 Integration into the wider national integrity system

A number of state bodies will be mandated to perform specific functions which may be closely linked to the ACB's mandate and upon which the effectiveness of ACB may depend. Challenges for ACBs may include inadequate positioning within the institutional system, overlapping mandates or lack of authority which may result in institutional rivalries and poor anti-corruption enforcement. The relations between the ACBs and the judicial system – especially, the police and the prosecutor's office – are of great importance. The efforts of these bodies should be co-ordinated and complementary, especially in regard to the collection of information and securing corruption-related evidence.

Ideally the national integrity system should allow for inter-institutional collaboration within a coherent institutional framework with effective coordination mechanisms in place.

6.2.4 Independence

As can be seen from textbox 1 above, Article 6 of the UNCAC states that, "Each State Party shall grant [the anti-corruption body or bodies] the necessary independence […] to carry out its or their functions effectively and free from any undue influence."

"Independence" is a multi-faceted concept (see textbox 3 on the following page). The question of how independent a public body actually is and what factors determine its independence are therefore complicated ones.[31] The scope of independence of individual ACBs must be adapted to the body's tasks and functions.[32] Different types of functions require different types and levels of independence. For instance if an ACB solely provides advice on the development of policies, it is not likely to be shielded from government participation in the implementation of its activities, because in this case the ACB forms part of the executive and should be subject to the same forms of political control as other executive bodies. On the other hand, the more an ACB is responsible for making decisions in individual cases the greater the need to ensure confidence in its impartiality, neutrality, and independence.

---

[30] See UNDP (2011).
[31] *Ibid*., p. 30.
[32] *Ibid.*

Textbox 3 Aspects of independence of state bodies/agencies

We may distinguish between several aspects of independence:

- ***Decision-making autonomy***; which refers to the extent to which the Government/ministries may influence the state body's decisions, or put differently: the potential discretion an agency may have because of the decision-making competences given to it. However, even when an agency has full decision-making autonomy the Government/ministries could still influence its decisions by restricting other types of autonomy, *i.e.* managerial, organisational, and financial independence. In other words, the extent to which an agency may actually decide issues independently is contingent on the other aspects of autonomy outlined below.

- ***Managerial autonomy***; which concerns the extent to which it may make decisions concerning the use of inputs (mainly personnel, finance, technical infrastructure) in the design of its internal organisation.

- ***Organisational autonomy***; which refers to the extent to which a state body is shielded from influence by the Government/ministries through organisational arrangements and arrangements regarding the appointment of the agency leadership. The extent of organisational autonomy is determined by the answers to the following two questions:

    - *Is the agency integrated in or separated from the ministry?* An agency organised outside the ministry enjoys greater organisational independence than an agency that is part of a ministry.
    - *By whom and on what conditions is/are the agency director/board members appointed?* It will increase an agency's organisational independence:

        - if two or more decision-makers are involved in the appointment procedure (for instance the Government collectively and not only a single minister)
        - if (when the director is elected by parliament) a qualified majority is required for appointing or dismissing the head of the agency
        - if the agency director/board members are appointed for life, or for a relatively long fixed term and not for a period of only two or three years
        - if the terms of office of the director/board members do not coincide with the election cycle
        - if the appointments are not renewable
        - if there are explicitly stated professional criteria for the appointment of the director/board members
        - if the board members cannot simultaneously hold other government offices
        - if the director/board members can only be dismissed for reasons not related to policy, and thus be protected from arbitrary removal.

- ***Financial autonomy***; which refers to the extent to which the agency depends on governmental funding or own revenues for its financial resources.

- ***Legal foundations of autonomy***; which refers to the extent to which the agency's legal status or the nature of the legal framework regulating the body prevents the Government/ministries from altering the allocation of competencies or makes such changes more difficult. The extent of legal autonomy is determined by the answers to the following two questions:

    - *Is the agency a separate legal person?* The legal autonomy is enhanced if the agency is a legal person separate from the state.
    - *At what normative level are key elements of the agency's independence from the Government/ministries regulated?* If key elements of the agency's independence are stipulated by governmental regulation, the Government can easily rescind this since parliamentary action is not needed. Thus the agency's legal autonomy is enhanced if significant aspects of independence are regulated by constitutional provisions or ordinary statutes.

The UNDP recommends[33] that legal provisions protecting an ACB's independence should include:

- the mandate, competencies, and powers of the ACB defined by law;
- a sufficient and predictable budget
- adequate positioning of the agency within the national institutional framework with clear accountability lines, cooperation protocols and coordination mechanisms
- clear and transparent procedures for appointing and dismissing the head of the agency and the highest ranking staff, including:
- involvement of the highest authorities of the judiciary and the legislature including the opposition, civil society, and other relevant stakeholders in the selection process for the head of the ACB
- a two-thirds or special majority in parliament for appointing and dismissing the head of the agency
- open and transparent recruitment processes for lower ranking staff with involvement and endorsement by ACB senior staff.

6.2.5 Accountability

Arrangements that ensure the ACB's independence must be balanced by measures that guarantee an adequate level of accountability. Although not an explicit UNCAC requirement, according to the UNDP anti-corruption agencies may operate more effectively if they are required to report to an oversight body, such as parliament or a public council.[34] An oversight body with sufficient authority to review and report on ACBs may enhance their credibility.

6.2.6 Resources

The UNCAC stipulates that, "The necessary material resources and specialised staff, as well as the training that such staff may require to carry out their functions should be provided". The establishment of successful ACBs implies substantial costs that have to be borne by the government.[35] ACBs need to have their own dedicated staff for performing most anti-corruption functions.[36] In order for ACB staff to be irreproachable in conduct and capacities, ACBs have to *i.a.* conduct open and fair recruitment, provide a competitive compensation package, and implement continuous training and capacity building.[37]

6.3 ACBs: Questions to be addressed in the needs analysis

6.3.1 General

43) Is there a specialised body (or bodies) established on a national level to prevent corruption?

---

[33] *Ibid.*, p. 30.
[34] *Ibid.*, p. 32.
[35] *Ibid.*, p. 32.
[36] *Ibid.*, p. 36.
[37] *Ibid.*, p. 36.

a. If yes, why has the anti-corruption agency been set up? (*Guidance for assessors: put particular emphasis on the role of international pressure/requirements*).

44) What are the responsibilities of the ACB?
45) Does the ACB have a statutory right to propose new legislation?
46) Does the ACB have the power to take investigative measures *ex-officio*?
47) Does the ACB have the right to access documents/information in other state institutions?
48) What is the extent of cooperation and flow of information between the ACB and the MoD?

6.3.2 Questions regarding legal framework

49) Is the establishment/existence of the ACB provided for by primary law?
    a. If yes do the statutory provisions sufficiently regulate its competences, and organisational and financial arrangements? (*Guidance for assessors: regarding organisational and financial arrangements, assess in particular the extent which the legal regulation of these factors ensures the ACB a degree of independence that is suited to its competences).*

6.3.3 Questions regarding the ACB's integration in the wider national integrity system

50) Is there a sufficiently clear distribution of tasks between the ACB and other institutions?
51) Have arrangements for cooperation and coordination of all relevant institutions charged with prevention and suppression of corruption been put in place?
    a. If yes, are they considered sufficient?
52) To what extent are the activities of the ACB compromised by weaknesses elsewhere in the national integrity system?

6.3.4 Questions regarding the ACB's independence

53) Are there clear and transparent procedures for appointing and dismissing the head of the agency and the highest ranking staff, including:
    a. Involvement of the highest authorities of the judiciary and the legislature including the Opposition, civil society, and other relevant stakeholders in the selection process for the head of the ACB;
    b. a two-thirds or special majority in parliament for appointing and dismissing the head of the ACB?
54) Are there open and transparent recruitment processes for lower ranking staff with involvement and endorsement by ACB senior staff?

6.3.5 Questions regarding the ACB's accountability

55) Is the ACB required to report to an oversight body, such as parliament or a council?
56) Can the ACB freely publicise its reports?

6.3.6 Questions regarding the ACB's resources

57) Does the ACB have sufficient human and financial resources to ensure that its functions are effectively discharged?
58) What is the number of staff a) planned/foreseen and b) actually employed?
59) Does the ACB have adequate premises and equipment?
60) Is systematic training provided regularly to ACB staff?
    a. If yes: To what extent are training activities funded by the national government/external donors?
61) To what extent does ACB staff enjoy a competitive compensation package? *(Guidance for assessors: the key question here is the extent to which salaries are sufficient to prevent undesirable turnover of staff).*
62) Is the ACB involved in training and capacity building activities within the MoD?

6.3.7 Overall assessment

63) To what extent are the requests/recommendations of the ACB followed up and implemented – in general and in the defence area more specifically?
64) To what extent is the ACB considered an effective and efficient institution?
65) Have the media, the civil society, international organisations or others raised serious concerns about the organisation, funding and impact of ACB – in general and in the defence area more specifically?
    a. If yes, what was the nature of these concerns?
    b. How (if at all) have the relevant authorities responded to such concerns?
66) What effects (good and bad) has the international community had on the development and performance of the ACB? *(Guidance for assessors: consider the extent of support and credible and consistent application of requirements and conditionalities).*
67) Have there been serious political attempts to upgrade, or conversely to hamper the work/reduce the impact of the ACB?
    a. *For assessors in EU member states*: Have there been any noteworthy developments concerning the ACB in the period after accession to the EU? *(Guidance for assessors: please describe briefly possible reform setbacks or reform progress).*

6.3.8 Questions to be asked ACB staff

68) What do you perceive to be the main causes of corruption in your country?
69) Are there any traditional/informal practices leading to corruption in your country?
70) How would you assess the political will to fight corruption in your country?
71) What is the role of political parties/politicians and other categories of public officials in corruption in your country?
72) What are the greatest obstacles which the ACB faces in its work?
73) What measures would most help to reduce corruption in your country?

74) What may possibly hinder the introduction and effective use of such measures?

Legislation to be consulted:

Law on Anti-Corruption Agency; other (sectorial) laws/regulations which establish specialised anti-corruption bodies.

7 Conflicts of Interest

7.1 Why are arrangements for the prevention of conflicts of interest important to build integrity?

For several reasons conflict of interest policies are important instruments for building public sector integrity. Public officials[38] are expected to make decisions and act for the public good without consideration of their private interests. Inadequately managed conflicts of interest on the part of public officials have the potential of weakening citizens' trust in public institutions.[39] Arrangements for handling conflicts of interest policies are important instruments for upholding these norms and building public sector integrity. In itself a conflict of interest is not corruption but has the *potential* for corrupt conduct, and if left unresolved, may ultimately result in corrupt conduct. Indeed, most of the time corruption appears where a prior private interest has improperly influenced the performance of the public official. Corruption spreads *particularised, exclusive* trust among persons who belong to the same social group, or who are otherwise close. This state of affairs prevents the development of *inclusive trust* on the level of society and impedes fair policy-making.

7.2 Conflicts of interest: the normative standard

7.2.1 Sources of norms regarding conflicts of interests

The normative framework outlined in this chapter is mainly based on the following documents:

- *Building Integrity and Reducing Corruption in Defence: A Compendium of Best Practices*, NATO and Geneva Centre for the Democratic Control of Defence Forces, 2010;
- *Managing Conflict of Interest in the Public Service: OECD Guidelines and Overview*, Paris: OECD, 2003;
- *Managing Conflict of Interest in the Public Service: A Toolkit*, Paris: OECD, 2005; "Values and Ethics Code for the Public Service", Canadian Minister of Public Works and Government Services, 2003;
- "Conflict-of-Interest Policies and Practices in Nine EU Member States: A Comparative Review", *SIGMA Paper* no. 36, June 2007.

[38] The term "public officials" is intended to cover elected officials, appointees and civil servants.

[39] OECD, "Annex to the recommendations of the council on OECD guidelines for managing conflict of interest in the public service," available at: http://acts.oecd.org/Instruments/ShowInstrumentView.aspx?InstrumentID=130&Lang=en&Book=False

7.2.2 Declaration of personal interests

Procedures that oblige public officials to declare relevant private interests that potentially conflict with their official duties should be put in place. We consider:

- income declaration
- asset declaration
- other personal interests.

According to SIGMA **declaration of income** is not absolutely necessary if there is declaration of assets and declaration of interests, but it could be helpful in controlling political appointees and locally elected officials. It is too costly to require all civil servants to declare income, and it probably would be sufficient to oblige only senior executives to do so.

SIGMA underlines that **declaration of assets** can be very helpful in detecting and controlling conflicts of interest facing locally elected officials, members of parliament and political appointees. However, requiring all civil servants to declare assets may not be necessary and may be too costly; it would be sufficient to oblige senior executives and civil servants in categories and sectors at risk to do so.

According to SIGMA declaration of **family income and assets** is a measure that is too strict and probably difficult to sustain constitutionally. Probably the best solution is to establish this measure on a voluntary basis or to require only the higher public officials in government and other high state institutions to make such a declaration.

Declaration and registration of **other personal interests** constitute a cornerstone of a good conflict of interest policy. SIGMA recommends that members of government, members of parliament, locally elected officials and political appointees should declare their interests in a formal document that is renewed every time these interests change. High-ranking civil servants and civil servants in categories and sectors at risk should also be compelled to declare and register their interests.

Private companies that are under the control of or subject to decisions of a public official should not be owned by this public official. Public officials should not own private companies that contract or have partnerships with the public sector. Private interests in these cases could compromise the proper performance of a public official's duties. Ownership of a small percentage of shares in large companies could be permitted when they are part of private investments and do not influence the policies of these companies, but this should be studied on a case-by-case basis, depending on the position occupied by the public official. Divestment, either by sale or by establishment of a blind management agreement, is the best solution whenever there is a conflict of interest involved with company ownership.

SIGMA also recommends that declarations of interests and assets of elected officials and political appointees should be open to public scrutiny, while at the same time respecting security rules and the protection of privacy. However, it

would be preferable in the case of civil servants that their declarations and disclosures be available only to the relevant agency head or to the body in charge of control and register.

7.2.3 External concurrent employment

Public officials should not engage in employment outside the public service nor take part in outside activities (*e.g.* appointments in NGOs, trade unions and political parties) if such employment or activities are likely to give rise to real, apparent or potential conflicts of interest. Public officials should provide information to their superior on all outside employment or activities. The superior will then decide if the employment or activities in question may subject them to demands/influences which are incompatible with their official duties, or which may cast doubt on their ability to perform their duties in a completely objective manner. The supervisor may require that the outside activities be modified or terminated if it is determined that a real, apparent or potential conflict of interest may arise.

The relevant regulation in this area should define the circumstances under which a public official may hold external concurrent employment, including the required authorisation procedures that must be implemented in this regard.

7.2.4 Withdrawal and abstention in decision-making

Public officials are responsible for demonstrating objectivity and impartiality in public decision-making. Thus, as SIGMA observes, one of the cornerstones of a good conflict of interest programme is to have a solid regulation on recusal. This requires a complete and detailed list of the causes of abstention or withdrawal.

7.2.5 Gifts and benefits

Public servants are not to accept any gifts, hospitality or other benefits that may have a real, apparent or potential influence on their objectivity in carrying out their official duties and responsibilities or that may place them under obligation to the donor. SIGMA recommends that gifts be completely forbidden, especially whenever a) they are given in appreciation for something done by a public official in carrying out his/her functions, and are neither requested nor encouraged; b) they cast doubts about the public official's independence and freedom to act; and c) they cannot be declared transparently to the organisation and to citizens. Official gifts to members of government and political appointees should belong to the patrimony of the state. Courtesy gifts (e.g. pins or pens) could be accepted only if their monetary value is very low.

7.2.6 Restrictions on employment after leaving office

Without unduly restricting their ability to seek other employment, former public servants should minimise the possibility of real, apparent or potential conflicts of interest between their new employment and their most recent responsibilities within the public service.

Similarly, within a certain period of time after leaving office, former public servants are expected not to:

- accept appointment to a board of directors or employment with entities with which they personally, or through their subordinates, had significant official dealings during the period of one year immediately prior to the termination of their service
- make representations for, or on behalf of, persons in any department or organisation with which they personally, or through their subordinates, had significant official dealings during the period of one year immediately prior to the termination of their service, or
- give advice to their clients using information that is not available to the public concerning the programmes or policies of the departments or organisations with which they were employed or with which they had a direct and substantial relationship.

7.2.7 The organisational system

To effectively implement a conflict of interest policy, it is necessary to have a reliable system of detection. SIGMA emphasises that it is absolutely necessary to have an independent body responsible for the detection system – an organisation that is adequately staffed and with sufficient powers to investigate and prosecute when needed. SIGMA recommends that internal inspectors are trained in issues related to conflicts of interest as part of a coordinated programme.

7.2.8 Penal and administrative sanctions

When it has been proven that a violation of law has occurred, it is necessary to have a system of sanctions, with no exceptions. Penal sanctions and disciplinary sanctions are both needed. To successfully execute sanctions it is necessary to have a good investigation and prosecution system.

7.3 Conflict of interests: the questions to be addressed in the needs analysis

7.3.1 Conflict of interests: general questions

75) Is the issue of conflicts of interest comprehensively regulated, *i.e*. in the form of a conflict of interests act?

a. If , yes when and why were these regulations first introduced?

b. What was the role of the international community in the preparation and adoption of the regulations?

7.3.2 Questions regarding declaration of personal interests

76) Is declaration of income/assets/gifts mandatory for public officials?

a. If yes, who is obliged to declare personal interests? Does the obligation of asset declaration apply only to the official in question or does it in addition cover members of his family?
b. What information is to be declared?
c. How is the information collected?
d. How is the information verified?

e. Are the declared data open to investigators tasked with detecting cases of possible criminal offences?
f. Which information is open to the general public and to other public institutions?
g. Is failure to comply with the rules of declaration of assets subject to disciplinary or criminal sanctions?
h. Which institution is responsible for assets declaration?
i. Is the process of asset declaration effective?
j. Are the MoD and the armed forces covered by the general regulations concerning declaration of personal interests?
k. What are the arrangements for assets declaration in the MoD and the armed forces?

77) Are there personal and family restrictions on holding property titles of private companies?
    a. If yes, what are the restrictions (*e.g*. divestment either by sale or by the establishment of a blind trust?)
    b. Do the rules apply to the MoD and the armed forces?

(Guidance for assessors: For all questions above, please distinguish between rules and arrangements that apply to civil servants/state employees and those that apply to MPs, ministers and political appointees).

78) Have the media, the civil society, international organisations or others raised serious concerns about the actual wealth/income and property interests of public officials? *(Guidance for assessors: "Public official" includes MPs, ministers, political appointees, and civil servants/state employees).*

7.3.3 Questions regarding external concurrent employment

79) Are there restrictions and control of concurrent external employment (e.g. NGOs, public/private enterprises, political parties)? *(Guidance for assessors: "concurrent external employment" includes offices held through either employment, election or appointment).*
    a. If yes, which rules apply and what categories of public officials are covered?
    b. Do the rules make it possible for a public official to hold dual paid public posts, to engage in business partnerships and hold positions in private companies?
        i. Do the rules make it possible for a public official to hold positions in public or private enterprises/private organisations or other public or private bodies whose activities fall within the scope of the official's employing organisation, or which otherwise affect or may be affected by activities of the latter organisation?
80) Are the MoD and the armed forces covered by the general rules regarding external concurrent employment?
81) No matter what rules apply, what is the actual practice regarding concurrent external appointments in the MoD and the armed forces?

a. Is it prohibited to take up additional work for the defence industry during military service?

(Guidance for assessors: For all questions above, please distinguish between rules and arrangements that apply to MPs, ministers, political appointees, and civil servants/state employees).

82) Have the media, the civil society, international organisations or others raised serious concerns about the actual practices of external concurrent employment?

7.3.4 Questions regarding withdrawal and abstention in decision-making

83) Are public officials who make, or provide advice to officials making public decisions obliged to submit a formal declaration of private interests relevant to these decisions?

If yes, does the obligation apply only to the official in question or does it in addition cover members of his family?

What rules apply if it is established that an official dealing with a case is in a conflict of interest situation? Do they adequately ensure that the official in question has to abstain from participating and leave the decision to an independent third party?

84) Are the MoD and the armed forces covered by the general rules on withdrawal and abstention in decision-making?

85) No matter what rules apply, what is the actual practice regarding withdrawal and abstention in decision-making in the MoD and the armed forces?

(*Guidance for assessors: For all questions above, please distinguish between rules and arrangements that apply to MPs, ministers, political appointees, and civil servants/state employees).*

86) Have the media, the civil society, international organisations or others raised serious concerns about the ways in which conflicts of interests have been handled in relation to public decision-making?

7.3.5 Questions regarding gifts and benefits

87) Are there rules regarding the ability of public officials to receive gifts and benefits? *(Guidance for assessors: for definition of "public official", see above question 78).*

a. If yes what is the main content of the rules?

88) Do the general rules regarding gifts and benefits apply to the MoD and the armed forces?

a. More specifically, what are the MoD regulations and actual practices regarding

i. Participation in industry sponsored events

ii. Renting of military property for external events

89) Have the media, the civil society, international organisations or others raised serious concerns about the rules/actual practices regarding gifts and benefits?

7.3.6 Questions regarding restrictions on employment after leaving office

90) Are there restrictions on public officials' post-employment in business or NGOs?
    a. If yes, what are the rules?
91) Do the general rules regarding employment after leaving office apply to the MoD?
92) No matter what rules apply, what is the actual practice regarding post-employment for MoD officials?
    a. Is there a moratorium on defence industry employment?
93) Have the media, the civil society, international organisations or others raised serious concerns about the post-employment of public officials?
94) Where an official has left the government service for employment in a non-government body, does the government retrospectively assess the decisions made by the official in his/her official capacity to ensure that those decisions were not compromised by undeclared conflicts of interests?

7.3.7 Questions regarding the organisational system

95) Is there an organisation (organisations) that is (are) responsible for enforcing the conflicts of interests regulations?
    a. If yes, does the organisation (do the organisations) have sufficient powers and a sufficient degree of independence and is it (are they) adequately staffed?
96) What is the role of internal administrative inspectors in issues related to conflicts of interest?
97) Is there any minister who is responsible for the development of policies/legal frameworks regarding conflicts of interests?
    a. If yes, how is this field organised and staffed in the relevant ministry?
    b. Assess the adequacy of the organisational and staffing patterns?

7.3.8 Questions regarding penal and administrative sanctions

98) Is there a system of penal and administrative sanctions regarding breaches of conflict of interest regulations?
    a. If yes, is it adequately applied?

7.3.9 Conflicts of interest: the role of the international community

99) What effects (good and bad) has the international community had on the development and efficiency of arrangements for handling conflicts of interest? *(Guidance for assessors: consider the extent of support and credible and consequent application of requirements and conditionalities).*

100) Have there been serious political attempts to upgrade or conversely to reverse arrangements for the prevention of conflicts of interests?
    a. *For assessors in EU member states*: Have there been any noteworthy developments concerning conflicts of interests legislation/arrangements for the implementation of this legal framework in the period after accession to the EU? *(Guidance for assessors: please describe briefly possible reform setbacks or reform progress).*

7.3.10 Questions to be asked the staff of the body responsible for the enforcement of the conflict of interest legislation

101) What do you perceive to be the main causes of breaches of the conflict-of-interest legislation in your country?
102) Are there any traditional/informal practices leading to violations of the conflict-of interest legislation in your country?
103) How would you assess the political will to uphold and enforce the conflict-of-interest legislation in your country?
104) What are the greatest obstacles which your institution faces in its work?
105) What measures would most help to reduce violations of the conflict-of interest legislation in your country?
106) What may possibly hinder the introduction and effective use of such measures?

Legislation to be consulted:

Law on Resolution of Conflict of Interest; Law on Anti-Corruption Agency; Civil Service Law; Code of Ethics/Conduct.

8 Freedom of access to information and transparency of defence budgets

8.1 Why is freedom of access to information important to building integrity?

Freedom of access to information promotes honesty/integrity by:

- reducing the possibilities for corruption and other forms of maladministration
- allowing the public to keep themselves informed of, and form well-founded opinion on the authorities that govern them
- strengthening citizens' control over government and promoting democracy.

The existence of Freedom of Access to Information Agencies (FOIA) is positively associated with a lower level of corruption and a significant positive trend in controlling corruption.[40] The right to free access to information is also increasingly perceived as an essential component of democratic society and the human rights[41] guaranteed by several international conventions/agreements.[42]

A transparent and detailed budget that is available to the public is key to holding governments accountable to their citizens. Opaque defence spending decisions can promote corruption and hinder the effectiveness and efficiency of armed forces. Along with these domestic reasons, a transparent defence budgeting process can have regional and international benefits. Excessive secrecy can lead to higher levels of uncertainty and suspicion on a regional and global level. There is a growing awareness among members of regional organisations that stability and security can be enhanced through increased disclosure of defence-related information.

8.2 Freedom of access to information: the normative standard

---

[40] Mungiu-Pippidi, Alina (ed.) 2011, *Contextual choices in fighting corruption: Lessons learned*, Norwegian Agency for Development Cooperation (NORAD), p. 54.

[41] OECD (2010), "The Right to Open Public Administration in Europe: Emerging Legal Standards", *SIGMA Paper* no. 46, OECD Publishing, p. 7, available at: http://dx.doi.org/10.1787/5km4g0zfqt27-en,

[42] See: Article 19 of the Universal Declaration of Human Rights (1948), Article 10 of European Convention on Human Rights (1950); European Council Convention on Access to Official Documents, adopted in 2008 (12 out of 47 countries are now signatories); it was introduced in the EU law by the Amsterdam Treaty, now guaranteed by Article 15 TEU (Lisbon Treaty) and Article 42 of the EU Charter of Fundamental Rights; Parliament's Council's Regulation on Free Access to Information, 2001. It also represents part of the (unwritten) EU *acquis*, and is hence subject to regular annual assessments of the Commission and is a precondition for meeting Copenhagen and Madrid criteria for the EU (potential) candidate states.

8.2.1 General principle on access to official documents and exceptions

The right to free access to information has two key meanings. The first is the right of an interested party to access, in the framework of an administrative procedure, documents held by the public administration that may affect an administrative decision. The second refers to the public right to unconstrained access to official documents. This kind of transparency regime is much wider in scope, since it regulates the public's right of access to official documents as part of citizens' freedom of information. This right, being general in character, is granted to everyone and embraces all the information officially held by public authorities, as the fundamental nature of the right requires. It is important to stress that only this second type of transparency is the subject of our investigation.

Freedom of access to information is a relatively new concept, which aims to fight negative traditional features of most European public administrations, such as secrecy and discreteness.[43] It was introduced in Sweden for the first time in 1766 and only began to be proclaimed in other countries in the second half of the 20th century, primarily by the adoption of Freedom of Information Acts (FOIA).[44] In some countries, free access to information has also been established as a constitutional right.[45] The fact that the right to free access to information is guaranteed by a Constitution and/or FOIA passed in parliaments, however, does not guarantee per se more openness and transparency in governments and administrations, especially when it is not followed by adequate implementation.

The Council of Europe's Convention on access to official documents summarises the key normative standards related to free access to information.

The first is that the right of access to public information is a "right of everyone, without discrimination on any ground" (Article 2.1). This means that the right to free access to information should be provided to all citizens, with or without citizenship and regardless of whether they are residents or not.

States, however, may limit the right of access to official documents but only in justified cases. These exceptions should be "set down precisely by law, be necessary in a democratic society and be proportionate to the aim of protecting".[46] The obvious risk is that, if the grounds for exemption are too broadly defined and interpreted, the right to know may be excessively

---

[43] OECD (2010), "The Right to Open Public Administration in Europe: Emerging Legal Standards",
SIGMA Paper no. 46, OECD Publishing, available at: http://dx.doi.org/10.1787/5km4g0zfqt27-en

[44] Such Acts were introduced in Norway and Denmark in 1970; USA (1966), Australia, Canada, New Zealand (1982-1983); Since 1990s - Hungary, Portugal, Ireland, Latvia, Czech Republic and since 2000 - UK, Estonia, Lithuania, Poland, Romania, Slovenia, Germany. Some European countries, such as Austria, France, Italy, and Spain have partially adapted their administrative procedure legislation.

[45] Sweden, France, Spain, Estonia, Finland, Poland, Portugal, Romania, Slovenia, Serbia.

[46] Council of Europe Recommendations (2002) 2 of the Committee of Ministers and explanatory memorandum, adopted on 21 February 2002.

constrained.

In all European FOIAs, the right to access is subject to a wide range of exemptions: some of them protect public interests, while others protect private interests.

a) Protection of Legitimate Public Interests includes two main groups:

The first encompasses four public interests: defence and military matters; international relations; public security (or public order or public safety;) and the monetary, financial and economic policy of the government. These interests are collectively identified as "sovereign functions" of the state.

The second group of public interest exemptions typically includes information related to court proceedings; the conduct of investigations, inspections and audits; and the formation of government decisions (i.e. internal documents.) It should be noted that these grounds for refusal of access refer to particular categories of acts rather than to generic public interests.[47]

b) Protection of legitimate private interests

There are essentially three kinds of private interests that transparency legislation usually mentions as grounds for exemptions: a) trade, business and professional secrets; b) commercial interests; c) personal data.

It is important to note that access to a document cannot be restricted simply because it belongs to an exempted category, such as the area of defence or public order. A concrete, individual examination of the documents in question is always necessary for two main purposes: first, to determine, in the light of the information which it contains, whether its disclosure would actually undermine a public or private interest protected by an exemption; secondly, to assess whether the exemption covers the document in whole or in part.[48]

8.2.2 Processing of requests and review procedure

The processing of requests should involve several guarantees:

- An applicant for an official document should not be obliged to give any reasons for having access to the official document. This is in line with the general nature of the right of the free access to information, which does not presuppose any conditionalities.
- Requests for access should be processed "promptly" or "without undue delay" and, in any case, within a reasonable time "which has been specified beforehand".[49]

---

[47] OECD (2010), "The Right to Open Public Administration in Europe: Emerging Legal Standards",
SIGMA Paper no. 46, OECD Publishing, pp. 21–26.

[48] *Ibid*; Opinion of Advocate General Maduro in Joined Cases C-39/05 P and C-52/05 P, Sweden and Turco v Council (2007).

[49] In most FOIAs, the time limit is short: 5 days in Estonia, 10 days in Portugal, 15 days in the Czech Republic, Finland and Poland and at EU level; 20 days in Slovenia and the United Kingdom. The deadline is longer in countries which regulate free access of information by

- Fees for free access to information should be kept to a minimum. Consultation of original official documents on the premises should in principle be free of charge. If an applicant requests a copy of an already available document, only the cost of reproduction (for a transcript or copy of a document) should be charged. If, however, a request entails a more significant burden on the administration, higher fees can be charged.
- A request for access to an official document may be refused if the request is manifestly unreasonable. This standard aims to protect public authorities from highly demanding and unreasonable requests that pose a manifestly unreasonable burden for the authority. In this case, the public authority bears the burden of proof of the unreasonable scale of that task. It is recommended that the public authority may reject the request only after it has genuinely investigated all other conceivable options and explained in detail in its decision the reasons why those various options also involve an unreasonable amount of work.
- A public authority which refuses access to an official document wholly or in part has a duty to give the reasons for refusal, which should state legislative exemption and clarification on how access to the document could harm public or private interests, or in what way the request is manifestly unreasonable. A statement of reasons must also be accompanied by an indication of legal remedies.

As regards review procedure, the applicant should have access to the first instance administrative review and second instance judicial review. It is recommended that the first instance administrative review is:

- independent from the government (e.g. appointed by the parliament by a qualified majority for no less than a five-year term and reporting to the parliament)[50]
- centralised within one institution, which would allow for unitary supervision and harmonisation of practices
- specialised to perform only this function, as expertise is crucial in performing both adjudicatory and standard-setting tasks and
- entrusted with enforceable adjudicatory powers, reviewable by a court.[51]

In addition, the applicant should always have a right of appeal to a court against the decisions of the administrative reviewing authority and be provided with an adequate and effective judicial protection.

Administrative Procedure Acts: three months in Spain, eight weeks in Austria, one month in France and Italy.

[50] For more information on adequate institutional arrangements please refer to Annex 1.

[51] OECD (2010), "The Right to Open Public Administration in Europe: Emerging Legal Standards",
SIGMA Paper no. 46, OECD Publishing, p. 41.

8.2.3 Complementary measures

In order to promote the principle of transparency it is recommended that state bodies make all information in the public interest available at their own initiative. The general principle is that documents should be made accessible by the institutions from the outset unless an exception to the public right of access clearly applies. It is further recommended that information of interest to the public should be published on institutional websites as the most convenient way of providing public access to information. Finally, it is recommended that public institutions provide public access to a register of documents in electronic form. Each register should include a "guide to information", giving details of: a) the information routinely published and directly accessible through the register; b) how the remaining information can be accessed on demand and c) whether or not a fee will be charged for this access.[52] It is also important that state bodies have clear rules on how they archive their documents, which would allow the applicants to have an effective access to all information of public importance.

8.3 The transparency of defence budgets: normative standards

Several international agreements/recommendations of international organisations deal with the transparency of public budgets generally and in the defence area specifically, *i.a*. the following:

- Drawn up in 1999, the OECD Best Practices for Budget Transparency[53] include three main components: 1) the main budget documents that governments should disclose with an appropriate content; 2) specific information to be disclosed in those reports including both financial and non-financial data; 3) methods for ensuring that reports are accurate and transparent. The manual is meant to encourage OECD member states to release more comprehensive and accurate fiscal data.

- The UN Instrument for Standardized International Reporting of Military Expenditures[54] dates back to 1980 and remains the only official worldwide reporting system to date. It is a voluntary instrument for disclosing defence-related expenditures and the UN calls on its members to do so on an annual basis.

- Launched in 2004, the NATO Partnership Action Plan on Defence Institution Building defines shared objectives and encourages exchange of knowledge on issues pertaining to the building of effective and efficient defence institutions which function under proper democratic and civilian control. Central issues of the Plan involve transparent and effective processes of budget allocation for the defence sector.

---

[52] *Ibid.*

[53] Available at: http://www.oecd.org/dataoecd/33/13/1905258.pdf.

[54] Available at: http://www.un.org/disarmament/convarms/Milex/html/MilexIndex/shtml

- In 2002, the Committee of Ministers of the Council of Europe adopted Recommendation Rec (2002) 2[55] meant to guarantee access to the public to public authorities' information. According to the Recommendation, official documents refer to 'all information recorded in any form, drawn up or received and held by public authorities and linked to any public or administrative function, with the exception of documents under preparation'.

In this section we deal with:

- the extent to which governments publish (or not) their budget proposal, enacted budget and audit reports
- the percentage of secret items in the defence expenditure.

8.4 Freedom of access to information: questions to be addressed in the needs analysis

8.4.1 Freedom of access to information: general questions

107) Is the principle of access to official documents granted by law (Constitution, special Freedom of Information Act, other legal acts)?
   a. If, yes when and why was the legal framework first introduced?
   b. What was the role of the international community in the preparation and adoption of the legal framework?
   c. What are the exceptions to the principle of freedom of access to information?
   d. Have there been allegations that the exceptions are too extensive or imprecisely defined?
   e. Are there sufficiently precise rules for the protection of classified information (*e.g.* classification of documents)?
   f. Have there been allegations that there is not a reasonable balance between the freedom of access to information and protection of classified data in the MoD, and that for instance provisions regarding protection of classified information is interpreted too widely?
   g. If yes, who has made such allegations?

108) Is there any minister who is responsible for the development of policies/legal frameworks regarding freedom of access to information?
   a. If yes, how is this field organised and staffed in the relevant ministry?
   b. Assess the adequacy of the organisational and staffing patterns?

8.4.2 Questions regarding the processing of requests and the review procedure

109) Is an applicant required to give reasons for accessing the information?

---

[55] Available at: http://www.coe.int/t/dghl/standardsetting/media/doc/H-Inf(2003)003_en.pdf

110) Is there a time limit for processing the request for access to information?
111) Are there fees for accessing information?
    a. If yes, are the fees reasonable?
112) Are there any assessments of the quality of responses to free access to information requests provided by the MoD?
    a. If yes, what are the main conclusions?
113) Is there a duty on the part of the public authority to give reasons for rejecting an applicant's request? Please provide examples why information was not provided by the MoD and the reasons for rejecting an applicant's request.
114) Is there an independent, centralised and specialised institution in charge of reviewing the decisions on free access to information and other related issues?
    a. If yes, does it have adjudicatory powers?
    b. Are there clear and transparent procedures for appointing and dismissing the head of the institution and the highest ranking staff, including a two-thirds or special majority in parliament for appointing and dismissing the head of the institution?
    c. Are there open and transparent recruitment processes for lower ranking staff with involvement and endorsement by senior staff?
    d. Does the institution have sufficient human and financial resources to ensure that its functions are effectively discharged?
    e. What is the number of staff (i.) planned/foreseen and (ii.) actually employed?
    f. Does the institution have adequate premises and equipment?
    g. Is systematic training provided regularly to the staff?
        i. If yes: To what extent are training activities funded by the national government/external donors?
    h. To what extent do staff members enjoy a competitive compensation package? *(Guidance for assessors: the key question here is the extent to which salaries are sufficient to prevent undesirable turnover of staff).*

115) Is there an effective judicial procedure in place for reviewing the second instance decisions on free access to information?

8.4.3 Questions regarding complementary measures

116) Are public authorities required to make all information of public interest available on their websites and are there other ways of disseminating information?
    a. What is the actual practice in the MoD?
117) Is there a proper archiving procedure for all the information/documents of public authorities in general and the MoD in particular? *(Guidance for assessors: try to establish a) the existence of an MoD archive, b) the extent to which the archive function is reflected in the MoD act on systematisation of work positions, c) the number of staff planned and actually employed in the archive unit, d) the existence of written routines/regulations for filing/handling/retrieving ministerial papers).*

8.4.4 Freedom of access to information: overall assessment

118) Has the Freedom of Access to Information Authority (if any) criticised the ways in which the MoD practices the regulations on freedom of access to information?
    a. If yes, what was the nature of the criticism?
    b. How has the MoD (if at all) responded to the criticism?

119) Have the media, the civil society, international organisations or others raised serious concerns about general arrangements for/actual practices concerning freedom of access to information/MoD practices in this respect?
    a. If yes, what was the nature of these concerns?
    b. If applicable, how has the MoD (if at all) responded to such concerns?

120) What effects (good and bad) has the international community had on the development and efficiency of arrangements for freedom of access to information? *(Guidance for assessors: consider the extent of support and credible and consequent application of requirements and conditionalities).*

121) Have there been serious political attempts to upgrade, or conversely to reverse the freedom of access to information legislation/hamper the implementation of this legislation?
    a. *For assessors in EU member states*: Have there been any noteworthy developments concerning legislation/arrangements for the implementation of freedom of access to information legislation in the period after accession to the EU? *(Guidance for assessors: please describe briefly possible reform setbacks or reform progress).*

8.4.5 Questions regarding the transparency of defence budgets?

122) Is the defence budget completely transparent and does it show all key items of expenditure?
    a. Is the approved defence budget publicly available?
    b. Are sources of defence income, such as equipment sales or property disposal, published?

123) What percentage of the defence and security budget is dedicated to spending on secret items relating to national security and intelligence services?

124) Have there been serious political attempts to strengthen or conversely to reduce the transparency of defence budgets?

125) Have the media, the civil society, international organisations or others raised serious concerns about the transparency of defence budgets?
    a. If yes, what was the nature of these concerns?
    b. If applicable, how has the MoD (if at all) responded to such concerns?

8.4.6 Questions to be asked staff members of the body responsible for the enforcement of the freedom of access to information legislation

126) What are the main types of breaches of access to information legislation in your country?
127) What do you perceive to be the main causes of these types of breaches?
128) Are there any traditional/informal practices leading to violations of the freedom of access to information legislation in your country?
129) How would you assess the political will to uphold and enforce the freedom of access to information legislation in your country?
130) What are the greatest obstacles which your institution faces in its work?
131) What measures would most help to reduce violations of the freedom of access to information legislation in your country?
132) What may possibly hinder the introduction and effective use of such measures?

Legal framework to be consulted:
Law on Free Access to Information and secondary legislation; Law on Administrative Procedure (if freedom of access to information is not covered by a special Law on Free Access to Information).

9 Internal and external audit, inspector generals, and control of the intelligence services

9.1 Why are arrangements for internal and external audit and inspector general's important to building integrity?

Arrangements for internal and external audit and inspector generals are vital to building integrity for several reasons.

Examination of the practices of state bodies allows the audit authorities to determine the extent to which the public bodies in question actually comply with established standards for financial accounting and reporting. They are key mechanisms to ensure proper use of public money in terms of its legality, regularity and cost efficiency. Lack of a proper internal and external audit can lead to misuse of public funds entrusted by the citizens to the government's stewardship.

Inspector Generals (IGs) can either have a purely military role, or an auditing, investigation or other special task. IGs can review processes and mechanisms in order to improve efficiency and value for money and produce reports and recommendations for reducing costs, eliminating fraud, reducing waste, investigating the abuse of authority, improving performance, strengthening internal controls, and achieving compliance with laws, regulations, and policy.

The intelligence sector is also a special area of state activity. It has a vital role in safeguarding national security (and in some extreme cases, the survival of the state), resulting in a strong imperative for secrecy. Yet, if not subject to control and oversight, the intelligence sector's unique characteristics – expertise in surveillance, capacity to carry out covert operations, control of sensitive information, and functioning behind a veil of secrecy – may serve to undermine democratic governance and the fundamental rights and liberties of citizens.

9.2 Internal and external audit: the normative standards

9.2.1 Public Internal Financial Control

Public Internal Financial Control (PIFC) systems aim to provide adequate and transparent methods of ensuring that public funds are being used for the objectives determined by the government and parliament. PIFC is preventive in nature and aims to ensure that adequate systems are in place to hinder as far as possible the occurrence of corruption and fraud.

PIFC encompasses international standards and EU best practice, and aims to provide the optimum approach for reforming traditional national control

systems. Usually, the more traditional systems of public internal control are based on a system of centralised ex ante control and ex post inspection of the legality and regularity of expenditure that focuses on third party complaints, on questionable transactions, on violations of budget rules (no matter how trivial or how unavoidable in specific circumstances) and on punishing human error. PIFC does not include inspection tasks such as the investigation and punishment of individual cases of fraud or serious irregularities. The aim of the PIFC is to shift the responsibility for financial control away from the centralised controls usually performed by the treasury to the managers of line ministries, in order to improve the efficiency and effectiveness of public expenditure.

The main international standards for Public Internal Financial Control are the International Organisation of Supreme Audit Institutions (INTOSAI) Guidelines for Internal Control in the Public Sector,[56] and the EC IIA Position Paper on Internal Audit in Europe.[57]

There are three key components of public internal financial control that are required for achieving efficient and effective use of public money *within organisations*: Financial management and control, internal audit and a central harmonisation unit (CHU) for developing methodologies and standards relating to the first two pillars.[58]

Financial management and control assumes that managers of all levels should be accountable for financial management and control policies. This means that managers are responsible for establishing and maintaining financial management and control systems to carry out the tasks of planning, programming, budgeting, accounting, controlling, reporting, archiving and monitoring. For such systems to be implemented there must be a systematic delegation of authority from the head of the organisation to organisation's management. The delegation should be accompanied by the delegation of budgetary resources and the specification of objectives to be achieved and performance standards and clear reporting requirements.

Reform of the organisation and culture of the civil service is fundamental for the successful implementation of PIFC, to allow for the introduction of the notion of managerial accountability. In undertaking this reform, a greater separation of political and managerial responsibilities should be established, with ministers focusing on strategy and policy, and managers on the delivery of services.

---

[56] http://www.tubitak.gov.tr/tubitak_content_files//icdenetim/ekutuphane/INTOSAI.pdf

[57] http://portalcodgdh.min-saude.pt/images/7/73/Position_Paper_on_Internal_Auditing_in_Europe.pdf

[58] The concept of Public Internal Financial Control (PIFC) has been developed by the European Commission in order to provide a structured and operational model to assist national governments in re-engineering their internal control environment and in particular to upgrade their public sector control systems in line with international standards and EU best practice. European Commission (2006), "Welcome to the World of PIFC, European Communities", available at: http://www.ec.europa.eu/budget/library/biblio/documents/control/brochure_pifc_en.pdf

Managers of an organisation should also be responsible for establishing a sound **internal control system**. Internal control may be defined as the organisation, policies and procedures used to help to ensure that government programmes achieve their intended results; that resources used to deliver these programmes are consistent with the stated aims and objectives of the organisations concerned and that programmes are protected from waste, fraud and manipulation.[59] Internal control systems should scrutinise all relevant areas of an organisation's activities, such as: ex ante control of expenditure, accounting systems, procurement, revenue control and reporting systems.

The second component is the establishment of a **functionally independent internal audit/inspectorate** mechanism with relevant remit and scope. Internal audit is an independent activity within an organisation providing an objective professional consulting opinion on internal control systems in an organisation. It objectively collects, checks, analyses and estimates information on control system operations in order to establish whether they are in accordance with standards and principles of sound financial management.

Although internal audit services are naturally subordinated to the head of the organisation within which they have been established, they should as far as possible be organisationally and functionally independent. Organisational independence means that the internal audit is independent from an activity which is subject to its auditing, that it is not part of any other organisational unit, and that it reports directly to the manager of the institution. Functional independence means that the internal audit independently – based on risk assessments – chooses the areas to be audited and the manner of auditing and reporting.

Finally, at government level, there should also be a **Central Harmonisation Unit** responsible for co-ordination and supervision of the applied financial management and control, and internal audit standards and methodologies of different public bodies (ministries, agencies etc.). This means that there should be an organisation responsible for the coordination and harmonisation of the implementation of financial management and control and internal audit throughout the entire public sector, usually within the Ministry of Finance. This is intended to provide consistency in the quality of internal control systems in place within the public sector, as well as providing a focal point for the dissemination of the best practice and developing new and enhanced guidance.

9.2.2 External audit

The external audit also has a crucial role in the evaluation of and reporting on how the financial control and internal audit systems are implemented. External audit provides a key mechanism by which taxpayers scrutinise how the government uses the money voted to it and holds government to account. Throughout the world, national supreme audit institutions (SAIs) have been

[59] Allen, Richard and Tommasi Daniel (eds.) 2001, *Managing Public Expenditure, A Reference Book for Transition Countries,* OECD Publishing.

established with the task of auditing the orderly and efficient use of public funds.

SAIs can accomplish their tasks objectively and effectively only if they are independent of the audited entity and are protected against any outside influence. The Lima Declaration q
distinguishes between various types of independence − independence of its members and officials and the financial independence of the institution. (See textbox 4 below.) The establishment of the SAIs and the necessary degree of their independence should be laid down in the Constitution, while the details of their work should be set out in the legislation. The best international practice also requires that the independence of the management of the SAIs be also determined by the Constitution, in particular, procedures for removal from office.[60] The method of appointment and removal of the management of an SAI depends on the constitutional structure of each country.

The SAIs also need to have full financial independence which means that they should be entitled to apply directly for the necessary financial means to the public body deciding on the national budget (i.e. parliament). SAIs should further be entitled to use the funds allotted to them under a separate budget heading as they see fit.[61]

It is for each SAI to determine its priorities in conducting different types of audit in accordance with a self-determined programme. SAIs should also have access to all records and documents related to financial management and should be empowered to request, orally or in writing, any information necessary to the SAI.

[60] Section 6, paragraph 2 of the Lima Declaration of Guidelines on Auditing Precepts, available on the INTOSAI web site, www.intosai.org
[61] *Ibid.*, section 7.

Textbox 4 Independence of Supreme Audit Institutions (The Lima Declaration, sections 5-7)

Independence of Supreme Audit Institutions

1. Supreme Audit Institutions can accomplish their tasks objectively and effectively only if they are independent of the audited entity and are protected against outside influence.
2. Although state institutions cannot be absolutely independent because they are part of the state as a whole, Supreme Audit Institutions shall have the functional and organisational independence required to accomplish their tasks.
3. The establishment of Supreme Audit Institutions and the necessary degree of their independence shall be laid down in the Constitution; details may be set out in legislation. In particular, adequate legal protection by a supreme court against any interference with a Supreme Audit Institution's independence and audit mandate shall be guaranteed.

Independence of the members and officials of Supreme Audit Institutions

1. The independence of Supreme Audit Institutions is inseparably linked to the independence of its members. Members are defined as those persons who have to make the decisions for the Supreme Audit Institution and are answerable for these decisions to third parties, that is, the members of a decision-making collegiate body or the head of a monocratically organised Supreme Audit Institution.
2. The independence of the members shall be guaranteed by the Constitution. In particular, the procedures for removal from office also shall be embodied in the Constitution and may not impair the independence of the members. The method of appointment and removal of members depends on the constitutional structure of each country.
3. In their professional careers, audit staff of Supreme Audit Institutions must not be influenced by the audited organisations and must not be dependent on such organisations.

Financial independence of Supreme Audit Institutions

1. Supreme Audit Institutions shall be provided with the financial means to enable them to accomplish their tasks.
2. If required, Supreme Audit Institutions shall be entitled to apply directly for the necessary financial means to the public body deciding on the national budget.
3. Supreme Audit Institutions shall be entitled to use the funds allotted to them under a separate budget heading as they see fit.

SAIs should be authorised to audit the legality and regularity of financial management as well as to carry out performance audits. The objective of audits of legality and regularity is to ensure that public funds are spent in accordance with existing laws, regulations and principles and hence can be used only for the purposes intended by the authorising legislation (usually annual budget law and other substantive legislation). Performance audit, on the other hand, is oriented towards examining economy, efficiency and effectiveness in the use of public funds.[62]

All public financial operations, regardless of whether and how they are reflected in the national budget should be subject to audit by SAIs. If a part of

[62] The audit of "economy" aims to determine whether minimum costs have been used for carrying out a certain activity; "efficiency" - whether the maximum output has been achieved from a given input (spending well), while audit of "effectiveness" checks the extent to which policy objectives have been achieved (spending wisely).

public financial management is excluded from the budget (e.g. health expenditures, which are usually operated by Health Insurance Funds), it should not be exempted from audit by the SAI.

The SAI should be empowered and required by the Constitution to report its findings annually and independently to parliament or any other responsible public body. This ensures extensive distribution and discussion and enhances opportunities for enforcing the findings of the SAI. The parliament or its designated committee should be also obliged to consider the SAI's reports and the government should be obliged to formally and publicly respond to the published reports. It is further important to ensure an effective follow-up on whether the SAI's and parliament's recommendations are implemented.

9.3 Inspector generals

Many countries have the post of Inspector General (IG), together with supporting IG staff (who can be either military or civilian), which can cover either specialised or general functions. IGs can vary in rank, and their tasks will also vary from country to country and the needs of the leadership. Their main roles, especially in relation to high risk areas such as combating waste or corruption, are: inspection; assistance; investigation and training (such as building integrity in defence establishments); and some IGs also have an outreach function with other nations. IG authority derives from both statute and regulation and IGs should demonstrate personal qualities of the highest standard and deliver accurate and impartial advice to the leadership to which they should have regular and direct access. The IG often acts as the principal advisor to the Minister of Defence, or a senior military appointment (although in some cases Special Inspector Generals could be responsible directly to parliament).

IGs should be completely independent and able to select their own work programmes which could include areas such as:

- Health and safety issues
- Trafficking in persons
- Whistle-blower reprisal – military, civilian, contractor employees, non-appropriated fund employees
- Improper military mental health evaluations
- Leaks of classified information
- Bribery and acceptance of gratuities
- Conflicts of interest
- Contract and procurement fraud
- Health care fraud
- Hotline complaints
- Reviewing military processes to improve efficiency, improve value for money or reduce corruption
- Travel or purchase card fraud
- Cost/labour mischarging
- Counterfeit or substandard parts
- Computer crimes

IGs can review processes and mechanisms in order to improve efficiency and value for money and produce reports and recommendations for reducing costs, eliminating fraud, reducing waste, investigating the abuse of authority, improving performance, strengthening internal controls, and achieving compliance with laws, regulations, and policy.

9.4 Control of the intelligence services: normative standards

The challenges of effective control of intelligence are significant and daunting, particularly in environments where perceptions of threats to security are heightened. The paradox of striving for transparency in an inherently secretive area and the degree of professional discretion that effective intelligence requires are central issues. Nevertheless, the values and norms which are fundamental to democratic systems require that intelligence agencies are accountable and subject to external control by all three branches of government, the legislature, the executive and judiciary:

- *The legislature* - Legislatures can review reports from the intelligence services submitted to parliament and scrutinise intelligence services through specialised committees.
- *The executive* - Ministers exercise control of intelligence through directives and policy guidelines. Governments and intelligence agencies should not have too close a relationship to avoid politicisation of intelligence and weakening of oversight.
- *The judiciary* - Courts can review intelligence service powers and government actions to ensure that they do not violate citizens' rights. –

9.5 Internal and external audit inspector generals and control of the intelligence services: questions to be addressed in the needs analysis

9.5.1 Questions regarding financial management, financial control and internal audit

133) Is there a coherent and comprehensive statutory base for defining the systems, principles and functioning of internal control, internal audit and financial management (e.g. Law on Budget System, Decree on internal control and audit, etc.)? *(Guidance for assessors: This question shall only be answered if there are already available analyses).*
134) When and why was the legal framework first introduced?
135) What was the role of the international community in the preparation and adoption of the legal framework?
136) Is there a system of ex ante control of commitments and payments in the MoD?
    a. Is the system operated by a sufficient number of competent staff?
137) Is there an organisationally and functionally independent internal audit mechanism in the MoD?
138) Does it use internationally recognised auditing standards?
139) Is the system operated by professional and trained staff?

140) Does the management of MoD have the responsibility for financial management and control systems, including ex ante controls of commitments and payments and recovery of unduly paid amounts? *(Guidance for assessors: see above 9.2.1 financial management. Answers to this question will probably to some extent have to rely on already available analyses by external expert organisations).*

141) Is there an effective government central coordination body that sets standards of internal control and management and internal audit (e.g. a central coordination unit within the Ministry of Finance)? *(Guidance for assessors: Answers to the question will probably have to rely on already available analyses by external expert organisations).*

9.5.2 Questions regarding external audit

142) Does the SAI have institutional independence (including organisational and financial independence)?
   a. Is the organisational independence of the SAI and its management determined by the Constitution and legislation?
   b. Is the independence of the members and officials of the SAI sufficiently safeguarded? *(Guidance for assessors: see textbox 4 above for definitions of various forms of independence).*
   c. Does the SAI have financial independence (is there a separate budget line provided for SAI and is it able to request approval of its funding directly from parliament)? *(Guidance for assessors: see textbox 4 above for definitions of various forms of independence).*
   d. Is the SAI free to decide what work it will carry out and does it have investigative powers?
   e. Is the SAI sufficiently staffed and funded?
   f. Are there open and transparent recruitment processes for lower ranking staff with involvement and endorsement by senior staff?
   g. What is the number of staff a) planned/foreseen and b) actually employed?
   h. Does the SAI have adequate premises and equipment?
   i. Is systematic training provided regularly to SAI staff?
      i. If yes: To what extent are training activities funded by the national government/external donors?
   j. To what extent does ACB staff enjoy a competitive compensation package? *(Guidance for assessors: the key question here is the extent to which salaries are sufficient to prevent undesirable turnover of staff).*

143) Does the SAI have clear authority to audit all public funds and resources?
   a. Are there any exceptions concerning the MoD and the armed forces?

144) Does the type of audit work carried out cover the full range of regularity and performance audit?

145) Are the MoD and the armed forces regularly subject to external audits?

146) If applicable: What were the main findings in the most recent audit report regarding the MoD and the armed forces?

147) Does the SAI have the ability to make the results of its work directly available to the public and parliament?
    a. Are there special regulations regarding audit reports on the Mod and the armed forces?
148) Is the work of the SAI effectively considered by parliament e.g. by a designated committee that also reports on its own findings? *(Guidance for assessors: Here we are concerned with the general nature of the interaction between the SAI, parliament and government: Does the parliament/a designated parliamentary committee consider SAI reports and express its requirements/recommendations explicitly and in writing? Are the requirements/recommendations formally sent to the government? Does the government provide timely and accurate answers?)*
149) Please assess the level of implementation of SAIs and parliament's recommendations related to audit results in the defence sector.
150) Have the media, the civil society, international organisations or others raised serious concerns about general arrangements for external or internal audit/audit arrangements, or audit findings regarding the MoD
    a. If yes, what was the nature of these concerns?
    b. If relevant, how has the MoD (if at all) responded to these concerns?
151) What effects (good and bad) has the international community had on the development and efficiency of arrangements for internal and external audit? *(Guidance for assessors: consider the extent of support and credible and consequent application of requirements and conditionalities).*
152) Have there been serious political attempts to upgrade, or conversely to reverse audit arrangements?
    a. *For assessors in EU member states*: Have there been any noteworthy developments concerning audit arrangements in the period after accession to the EU? *(Guidance for assessors: please describe briefly possible reform setbacks or reform progress).*

9.5.3 Questions to be asked staff members of SAIs

153)What are the main difficulties in effectively auditing government activities in general
and defence activities in particular?
    a. What are the greatest obstacles which your institution is facing in its work?
154) What do you perceive to be the main causes of these difficulties?
155) Are there any traditional/informal practices leading to these difficulties?
156) How would you assess the political will to enforce effective audit arrangements in your country?
157) What measures would most help reduce the difficulties in the area of state audit?
158) What may possibly hinder the introduction and effective use of such measures?

9.5.4 Questions regarding inspector generals

159) Has the Ministry of Defence (or high level military organisation) appointed an Inspector General (IG), and if not, why not? What does the IG policy and strategy cover?
160) What is the IG (and his officials) selection process, how long is/are he/they appointed for, what reasons are required for their dismissal or replacement?
161) What is the composition of the IG organisation? Is it sufficient (in both numbers and rank) and resourced for the task, is it independent, and does the IG have direct and regular access to the highest leadership level?
162) What tasks does the IG function perform and what evidence is there that it has undertaken (how much and how successfully) work in the following areas: inspection; assistance; investigation; and training?
163) How is the IG/organisation regarded by superiors, military personnel, media, the international community and the public?
164) Can the IG take forward work independently, or is he 'tasked' and directed solely by higher authority? What military functions (such as operations, administration, finance, human resources, procurement) can the IG inspect, and how often and how rigorously is this done and what effect have the inspections had?
165) Is there a hotline associated with the IG, and if so, is it used efficiently and have the results of the investigations been effective; have they resulted in any prosecutions. If so, what impact have they had on other personnel and within the military structure?
166) Who does the IG report to, are compiled reports available to the public, and what successes (in all areas) have been achieved (especially in tackling corruption, improving processes and reducing waste)? Who does the IG coordinate activities with (such as the Internal/External Audit Departments and Prosecutors' Office), both military and civilian?
167) What works well in the IG function and what does not?

9.5.5 Questions regarding control of the intelligence services?

168) Which parliamentary committee (if any) is responsible for overseeing the intelligence services?
169) Are its responsibilities sufficient to effectively oversee the intelligence services?
170) How deep does the committee go in its oversight?
171) What are the main mechanisms for the government's control of the intelligence services?
172) To what extent are the intelligence services subject to direct influence by the government/ministries? *(Guidance for assessors: Direct influence by the government is dependent on i.a.,a) the extent to which the government may intervene directly in the day-to-day operations of the services, b) the managerial autonomy of the heads of the services, c) the extent to which the services are separated from the government/ministries through organisational arrangements (i.a. if they are organised outside or inside ministries), and d) the nature of the legal framework regulating the services, for instance if key regulations are stipulated by governmental decisions, the government can easily rescind them as parliamentary action is not needed).*

173) Which law (if any) regulates the way in which members of the intelligence staff are recruited and their conditions of service?
    a. Is the legal framework and actual governmental practices sufficient to prevent politicisation of the intelligence services?
174) What are the main mechanisms of judicial control of the intelligence services and how effective are they?
    a. In what cases are there legal requirements that the intelligence services must obtain court permission to conduct certain investigations?
        i. How adequate is the legal framework? *Guidance for assessors: Here you will have to rely on already available assessments).*
175) Have the media, the civil society, international organisations or others raised serious concerns about arrangements for the control of the intelligence services?
    a. If yes, what was the nature of these concerns?
        i. To what extent have there been allegations of politicisation/political abuse of the intelligence services?
    b. If relevant, how has the government (if at all) responded to these concerns?

Legal framework to be consulted:
On public internal financial control: Law on Budget System and secondary legislation related to internal financial control and internal audit.

On external audit: Constitution; Law on Supreme Audit Institution and related secondary legislation.

10 Ombudsman institutions

10.1 Why are ombudsman institutions important to building integrity?

For democratic states to be able to achieve the objectives of good governance, continual control, both political and legal, is imposed on government institutions and public officials. However, control mechanisms and remedies provided by parliaments and courts may not always be fully adequate due to *i.a.* party-politicisation of parliamentary oversight and lengthy court proceedings. Hence, to ensure good administration and fair play, ombudsman institutions emerged, first in the Scandinavian countries and later in the UK and New Zealand. The ombudsman is empowered to investigate citizens' complaints about government decisions and recommend their rectification. Usually he has the power to investigate and criticise but not to reverse administrative actions. The ombudsman is an independent arbiter between the government and the citizens. Arguably, the existence of an ombudsman institution and the disclosure of his/her findings will help to expose corruption and deter public officials from engaging in such behaviour.

The record of *military ombudsmen* (see below) shows that this institution may be a powerful tool in enhancing public confidence in the defence sector. In addition the military ombudsman provides essential protection to individual servicemen and women against abusive treatment within the military.

10.2 The normative standard[63]

10.2.1 Institutional factors

The ombudsman institutions should be provided for by Constitutional or legal provisions and the ombudsman office established by law. The procedures for appointing the ombudsman must ensure the holder of the office a sufficient degree of independence. He/she should be protected from arbitrary removal or censure and the ombudsman's offices provided with a separate budget sufficient to satisfy the organisation's needs. The members of the ombudsman's staff should be employed on the basis of professional merit and be easily accessible to citizens.

10.2.2 Competences

The ombudsman's field of responsibility should include *i.a.* the following competences:

---

[63] As provided in the so-called Paris Principles which were adopted at an international meeting and thereafter endorsed by the UN General Assembly as well as the Council of Europe. These principles also guide the CoE's Commissioner for Human Rights in his co-operation with national ombudsmen. The independence of these institutions could also be assessed according to whether they have enough human and material resources allocated for their work and whether they are working under political pressure. The Paris Principles are available at: http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfNationalInstitutions.aspx

- The right to investigate whether the government, including the MoD, performs its functions in compliance with the law and ethical standards.
- The right to issue recommendations to the government or individual state institutions to reverse improper administrative actions.
- The right to make the results of its activities public.
- The right to submit proposals for new legislation and other measures to promote good governance and integrity.
- The right to recommend dismissal of political appointees, by documenting illegal political or administrative practices.[64]

10.2.3 Reporting

Most ombudsman offices report annually on the activities of the office to the appointing authority, other policy makers and the public.[65] Normally the reports include information on: the number of inquiries received, the number of cases resolved, cases investigated and investigations pending, recommendations made and whether or not they were complied with.

10.3 The ombudsman for defence

The ombudsman for defence represents an additional mechanism for monitoring the military, on behalf of citizens and/or parliament. The main task of the military ombudsman is to investigate alleged arbitrary decisions or misdemeanours committed on behalf of the responsible minister(s) of the security services, notably the military.

The institutional embedding of the military ombudsman in the political system varies from country to country. Defence ombudsmen can be appointed by parliament and report to the parliament (Germany, Sweden), or can be appointed by the minister of defence (Israel, Canada). Some ombudsmen have their office within the parliamentary precincts (as is the case of the German Parliamentary Commissioner for the Armed Forces or it can be institutionally located outside the parliament (Sweden).

Citizens or servicemen who were mistreated by the military can ask the ombudsman to start an inquiry. In addition, parliamentarians can ask the ombudsman to investigate alleged abuses and complaints. Often the cases investigated by the ombudsmen deal with exemption from, and postponement of obligatory military service, transfer and re-posting during military service, demobilisation, leave of absence, disciplinary and punishable offences. If the ombudsman finds that a complaint was justified, he/she can make recommendations, including demanding the institution in question change or reconsider its decision.

Bearing in mind the nature of the security sector, some information cannot be disclosed to the public for reasons of national security. Many countries have established specific provisions in law as to how the ombudsman should operate in matters of national security. Generally speaking, even where rules of top

[64] *Ibid*
[65] *Ibid*

confidentiality apply, the ombudsman is allowed to carry out whatever investigations are necessary, and to have access to military bases and all relevant documents for any specific case. The ombudsman, however, cannot disclose the findings of the investigation to the general public.

10.4 Ombudsman institutions: questions to be addressed in the needs analysis

10.4.1 Questions regarding institutional factors

176) When and why was the ombudsman institution first introduced?
177) What was the role of the international community in the introduction of this institution?
178) Is the ombudsman's institution provided for by the Constitution and is the ombudsman's office established by law?
179) Are there clear and transparent procedures for appointing and dismissing the ombudsman and the highest ranking staff, including:
    a. Involvement of the highest authorities of the judiciary and the legislature including the opposition, civil society, and other relevant stakeholders in the selection process for the ombudsman;
    b. a two-thirds or special majority in parliament for appointing and dismissing the ombudsman?
180) Are there open and transparent recruitment processes for lower ranking staff?
181) Does the ombudsman have sufficient human and financial resources to ensure that the functions of the institution are effectively discharged?
182) What is the number of staff a) planned/foreseen and b) actually employed?
183) Does the ombudsman have adequate premises and equipment?
184) Is systematic training provided regularly to the ombudsman's staff?
    a. If yes: To what extent are training activities funded by the national government/external donors?
185) To what extent do members of the ombudsman's staff enjoy a competitive compensation package? *(Guidance for assessors: the key question here is the extent to which salaries are sufficient to prevent undesirable turnover of staff.)*
186) Overall, do the institutional and financial frameworks of the ombudsman institution ensure sufficient independence and impact?

10.4.2 Questions regarding competences

187) What are the ombudsman's competences, and do his/her current competences allow this institution to operate effectively?
    a. What type of accreditation does the ombudsman institution possess in relation to the Paris Principles (Types A, B, C)? *(Guidance for assessors: National human rights institutions which are considered to fully comply with the Paris Principles are accredited as having 'A status', while those that partially comply are accredited as having 'B status').*
    b. Has the ombudsman acquired the function as a National Preventive Mechanism under the UN Optional Protocol to

the Convention against Torture? How is this mechanism related to the defence sector?

c. Has the ombudsman acquired the function of a body that protects the anti-discrimination principles in the national administration?
    i. If yes, what are the implications of this state of affairs for the function of the ombudsman in relation to the defence sector?
d. Does the ombudsman have access to classified information?

188) Do the ombudsman‘s competences cover the defence sector?
    a. If yes, have there been any cases relating to this sector in the past two years?
    b. What was the content of these cases?
    c. Did the cases lead to any action by the ombudsman?
        i. If yes, what kind of action?

10.4.3 Questions regarding reporting and impact

189) How often does the ombudsman report?
190) What is the main content of the reports (*e.g.* does the report contain the following: the number of inquiries, the number of cases resolved, cases investigated and investigations pending, recommendations made and whether or not they were followed)?
191) Please assess the degree of implementation of the ombudsman's recommendations overall and in the defence sector.
192) Have the media, the civil society, international organisations or others raised serious concerns about the ways in which the ombudsman's office is functioning, *i.a*. its accessibility and the impact of his/her work overall and in the defence sector?
193) What effects (good and bad) has the international community had on the establishment and the development of the ombudsman institution? *(Guidance for assessors: consider the extent of support and credible and consistent application of requirements and conditionalities).*
194) Have there been serious political attempts to upgrade, or conversely to reverse the role of the ombudsman?
    a. *For assessors in EU member states*: Have there been any noteworthy developments concerning the role of the ombudsman in the period after accession to the EU? *(Guidance for assessors: please describe briefly possible reform setbacks or reform progress).*

10.4.4 Questions to be asked staff members of the ombudsman's office

195) What are the most serious weakness/malfunctions of the public administration in your country as far as the ombudsman is concerned?
196) What do you perceive to be the main causes of these types of failures?
197) Are there in your country any traditional/informal practices leading to these types of failures?
198) How would you assess the political will to uphold and enforce legislation and other arrangements pertaining to the ombudsman?
199) What are the greatest obstacles which your institution faces in its work?

200) What measures would most help to reduce the weaknesses/malfunctions mentioned above?
201) What may possibly hinder the introduction and effective use of such measures?

10.4.5 Questions regarding the ombudsman for defence

202) Is there an ombudsman for defence in your country?
    a. If yes, answer the questions 176-194 (apart from 188) with respect to this institution.

Legislation to be consulted:

Constitution; Law on Ombudsman.

11 Public procurement and asset disposal

11.1 Why are arrangements[66] for public procurement and asset disposal important to building integrity?

Arrangements for public procurement and asset disposal are vital to building integrity for several reasons.

- Undoubtedly public procurement is the government activity that is most *vulnerable* to corruption – given the huge volume of transactions and the number of persons and organisations involved.
- Deficient arrangements for public procurement:
    - can diminish public confidence in the competitive process, and undermine the benefits of a competitive marketplace
    - can lead to collusive tendering where businesses, that would otherwise be expected to compete, secretly conspire to raise prices or lower the quality of goods or services for purchasers who wish to acquire products or services through a bidding process.
- Public and private organisations rely upon competitive bidding to achieve better value for money. The procurement process will only result in lower prices and better quality when companies can compete transparently.

11.2 Public procurement and asset disposal: the normative standards

11.2.1 Public procurement: legal framework

The national legal framework should provide for the establishment of a coherent and comprehensive institutional and administrative infrastructure for all aspects of the procurement process: planning, decision making, implementation, monitoring and control. It is important that the legal framework differentiates clearly between laws, regulations and procedures and that precedence is firmly established in order to minimise inconsistencies in application. It is advisable that each public body has a public procurement manual which includes provisions related to integrity and ethics. Tasks related to public procurement should be clearly reflected in the job descriptions of all relevant civil servants/state employees.

[66] Regulations on public procurement notices and records; Regulations on the conditions for applying the CPV; Regulations on the methodology for drawing up and handling tender documents and tenders; Regulations on the implementation of control through the activities of prevention (ex-ante) and instruction; Regulations on the content and the method of forwarding public procurement reports; Regulations on the List of Entities Bound by the PP Acts; Regulations on the format, methods and conditions of training in the public procurement system.

The general, legal framework for public procurement should cover all areas/sectors/situations. In some countries, however, a number of public bodies/areas – especially the defence sector – are exempted from the general Public Procurement Act. Exemptions from competition requirements significantly increase the risk of mismanagement and corruption. Thus, the use of derogation must be limited to clearly defined and exceptional cases (EU Court of Justice). Derogation from the general public procurement legislation should be considered a serious political/legal issue.[67]

As a general rule, procurement of non-sensitive and non-military equipment, works and services in the defence area should be regulated by the general public procurement law. However, exceptions may be made when the general rules do not sufficiently:

- protect classified information
- secure the supply of particularly important goods and services, particularly in times of crisis or armed conflict.

The scope of military procurement should be clearly and exhaustively defined. For example military equipment usually includes:

- arms, munitions, war materials
- products not intended for specifically military purposes
- sensitive security equipment, works and services which involve access to classified information.

TI has prepared general recommendations for procurements in the defence area. A summary of these guidelines are given in textbox 5.

Textbox 5 Defence procurement – TI recommendations

Defence procurement processes will vary from country to country, and there will be further variations depending on whether defence procurement is to be undertaken using open competition, or single source acquisition, or as part of an offset (also called counter trade) programme. Essentially an operational evaluation should be undertaken to identify the combat capability required and the equipment options to fill it; major procurements should be scrutinised and agreed by parliament, but lesser items may be procured in accordance with the financial delegations approved and allocated to organisations and commanders. However; all acquisitions and budgets should be transparent. Ideally a range of integrity procedures and mechanisms should be in place to reduce the corruption risk, such as: public advertising of tendering opportunities; the use of a separate (from the end user) equipment procurement organisation; open competition (as opposed to single source procurement) as the normal procedure; independent tender assessments; separate financial and commercial delegations; independent project approval; parliamentary and public scrutiny; simultaneous document release to all tenderers; and debrief to all tenderers on the award of the contract outlining assessed scores. against criteria.

There should be a public procurement office with a clear legal basis for its work and with overall responsibility for the design and implementation of public

[67] Directive 2009/81/EC on defence and sensitive security procurement, July 2009.

procurement policies. Such an office may be located in a ministry or in the office of the prime minister.

11.2.2 Procurement procedure

Pre-bidding

Decision

Lack of systematic planning and implementation of procurement processes creates risks of opaque and corrupt practices. For this reason each public body intending to carry out procurements should develop a procurement plan detailing the items to be procured, the budget available, the persons responsible and the deadlines for the implementation of the plan. The procurement plan should be approved by the head of the procuring organisation. In order to secure transparency it is advisable that all procurement plans are published. Precautions should be taken to ensure that technical specifications are not described and requirements regarding administrative compliance and technical and financial capacity are not set in such a way that there can be only one supplier.

Bidding

The real nature of the procurement in question should determine the choice of procurement procedure to be used. Any decisions to make procurements from "single sources" should be based on special procedures. The overall number of "single source" procedures and their value should be kept to a minimum (see textbox 6 below).

Textbox 6 Single source procurements in defence –TI recommendations

Ideally all procurement should be by competition in order to drive down costs and reduce corruption risk; however, this is not possible in practice and some items or services will need to be acquired from a single source (i.e. without competition – such as specialist spares from a particular equipment manufacturer). Whilst this procedure is acceptable when absolutely necessary, it can be abused and can hide corruption. Single source procurement should be undertaken only when absolutely necessary (for example procurement for socks should not be single source but be competed) and there should be justification and transparency mechanisms in place for risk mitigation. Often single source procurement is used during the acquisition of Urgent Operational requirements (UORs). UORs are normally utilised in order to: acquire a specific operational capability identified at short notice; fill previous unknown gaps; accelerate programmes; provide a patch until a funded programme is implemented; or fill a previously identified gap which was unfunded. UORs are often shrouded in secrecy and undertaken at very short notice, often bypassing the conventional funding and scrutiny routes designed to reduce corruption risk. Whilst UORs are a very necessary tool to enhance short notice operational capability, they should still be subject to oversight and transparency.

Information about public procurement should be published widely, *i.a*. in all key mass media. However, while countries are progressively disclosing more information on public procurement procedures and opportunities in accordance with Freedom of Information Acts, there are indications that they are becoming increasingly selective when it comes to information that is not disclosed – at what stage of the process and to whom (bidders, other stakeholders and the

public at large). It is important to ensure that all bidders have access to the same information at the same time.

A timeframe for the preparation of the bid that is insufficient or not consistently applied across bidders could favour a particular bidder. The decision on procurement should therefore give all potential providers sufficient time to prepare their offer.

Documentation
The terms of reference of the procurement process should be based on a proper needs analysis and fully correspond to the objectives and targets of the procurement.

Steps should be taken to ensure that the technical documentation and definition of financial and technical capacity directly correspond to the objectives and targets of the procurement.

Evaluation
The decision to establish an evaluation commission should be taken before the public procurement notice is published. The members of the evaluation commission should be selected through an open selection procedure. A mechanism ensuring that commission members are not in conflict of interest situations should be in place. All commission members should be independent in their decision-making and fully capable of objectively assessing the bidders and their proposals and of making a final recommendation. The recommendation of the evaluation commission should be justified and published on the website of the ministry. As a general rule, the recommendation should be legally binding for the final decision takers.

All tender evaluation commissions should prepare complete and sufficiently detailed records – on paper and in electronic form – of the procurement processes. All (unsuccessful) bidders should have a recognised right to access and to base a potential appeal on these records. Lack of such access discourages unsuccessful bidders from challenging procurement decisions.

Post-bidding

Contract
Mechanisms for determining the quality of the procured goods and services – and for taking special measures in the event that requirements are not met – should be in place in each public body, including the MoD.

Complaints/appeals procedure
A complaint/appeal procedure should ensure that the bidders have the right and are practically empowered to uphold/defend their interest.[68] The appeal procedure should be efficient (cheap and fast), provide for hearings and be open

[68] Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts.

to the public.[69] The appeals/complaints authority should be sufficiently independent of the first instance decision-maker.

A proportional approach to control is advisable; large procurements should be monitored/checked. An ex-ante control procedure should be introduced for procurements with particularly high value.

11.2.3 Asset Disposal[70]

Often 'below the radar' asset disposals are a prime area for corruption, but one that is easily addressed with controls. Besides personnel and expertise, equipment and buildings are often the most valuable assets a defence or security establishment possesses. Within defence and security establishments, assets can be subdivided into six categories: 1. Military equipment which cannot be used for civilian purposes; 2. Land and Buildings; 3. Assets under construction; 4. Transport equipment; 5. Plant and Machinery; and 6. Information Technology (IT) and Communications. All six of these categories can be subject to corruption. The two most commonly reported categories are *Land and Buildings*, and *Weapons*.

When disposing of surplus equipment, defence establishments are obliged to obtain the best outcome for the tax payer. Corruption risks exist particularly in nations that are selling or disposing of large quantities of assets and in conflict or post-conflict countries where military assets cannot be protected. Often outside actors have contributed to diversion and improper disposal. The use of surplus equipment and infrastructure is a challenge for all defence and security establishments. When the sale or disposal of surplus equipment and infrastructure is not subject to the same scrutiny as defence procurement, management of equipment and surpluses can involve a very high corruption risk. In principle, the sale of equipment or infrastructure should be approached in a way similar to the procurement.

11.3 Public procurement and asset disposal: Questions to be addressed in the needs-analysis

11.3.1 Questions regarding the legal and institutional framework

203) Is there a public procurement legal framework that applies to all public procurements undertaken by using public funds and what is the structure of the legal framework?

---

[69] Directive 2007/66/EC (EP and EC) amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts.

[70] These guidelines are taken from or based on: Transparency International (2011), *Building Integrity and Countering Corruption in Defence & Security: Twenty Practical Reforms*; Inspector General, US Department of Defense, "Controls Over Army Working Capital Fund Real Property Assets", May 2009; US Department of Defense (1999), "Financial Management Regulation: Transferring, Disposal, and Leasing of Real Property and Personal Property", Volume 12, Chapter 14.

204) Please outline any exceptions (together with supporting rationale) for any items/services/areas/sectors that are exempted from the general procurement legislation.
205) When and why was the public procurement legal framework first introduced?
206) What was the role of the international community in the preparation and adoption of the legal framework?
207) Please estimate the current percentage of the total value of defence procurements that is single source (not based on competition)?
208) Is there a central public procurement office with overall responsibility for the design and implementation of public procurement policy?
    a. If yes, describe briefly the legal status and functions of this institution.
    b. Describe briefly problems it may be facing in its work.
209) How is procurement organised for the MoD and the armed forces? Are there internal units/positions responsible for procurement?
210) What is the number of staff responsible for procurement in the MoD? What is their professional profile; what trainings were provided for them last year, including anti-corruption trainings?
211) Is there a procurement procedure manual approved by the minister of the MoD containing procedural, and integrity and ethics provisions?

11.3.2 Questions regarding procurement procedure

212) Are procurement requirements derived from an open well-audited national security strategy?
213) Is there a procurement plan developed and approved by the head of the MoD?
    a. If yes, is the plan based on a proper needs analysis? Is there a unit responsible for its implementation?
    b. If yes, is there an action plan setting deadlines, persons responsible, budget, items, etc.?
    c. If yes, how widely are procurement/acquisition plans (both classified and unclassified) published?
214) What proportion of potential defence purchases is made public, by number and by value?
215) What safeguards are in place to prevent requirements from being shaped such that there can be only one supplier? What are the mechanisms for determining the equipment specifications, including the decision-making processes?
216) What procedures and standards are companies required to have, such as compliance programmes and business conduct programmes, in order to be able to bid for work for the Ministry of Defence or armed forces?
    a. Does the procurement process require the main contractors to ensure that subsidiaries and subcontractors adopt similar anticorruption programmes and what evidence is there that this has been enforced?
217) What sanctions are used to punish corrupt practices of the supplier?
    a. How effective have they been in the last two years?

218) Who makes the final decision regarding the kind of public procurement procedure that is to be applied? On what kind of advice/analysis is this decision based?
219) Is there a special procedure to determine what procurements should be "operationally essential" and "single source"?
    a. Is the procedure sufficient to prevent potential abuse?
    b. What is the percentage of each (by number and value) when compared with the conventional procurement arrangements?
220) How widely published is the decision to initiate procurement?
221) Does the decision give potential providers sufficient time to prepare their proposals?
222) Are the terms of reference for procurements based on a proper needs analysis and does the analysis fully correspond to the objectives and targets of the procurement?
223) Do the technical documentation and definition of financial and technical capacity correspond to the objectives and targets of the procurement?
224) Is there an obligation to establish a tendering committee?
    a. If yes, where is the legal basis for this obligation?
    b. Is there a practice to actually establish tendering committees?
    c. If yes, is the decision to establish a committee taken before the procurement initiative is published/the procurement process starts?
    d. How are committee members selected? Who makes the selection decision and on whose advice?
    e. Is there a mechanism preventing individuals who are in conflict of interest situations from participating in the committee?
    f. Is the recommendation/decision of the evaluation committee stated and justified in writing, and is it published, for instance on the website of the ministry?
225) When negotiating offset contracts, does the government specifically address corruption risks?
    a. If yes, how?
    b. What oversight mechanisms are in place throughout the life of the contract and offset programme to ensure transparency, value for money, and delivery in order to avoid long-term corruption?
226) Are complete and sufficiently detailed written records kept (on paper or in electronic form) of each procurement?
    a. If yes, are the records properly filed and readily available for later use?
227) Who makes the final procurement decision: the tendering committee, an authorised official, the minister, the government, the parliament, other bodies? Please describe the legal regulations and actual practices.
    a. When does the minister need the prior authorisation of the Council of Ministers?
    b. What was the proportion of procurement decisions taken by the Minister last year?
    c. What precautions – if any – are taken when the minister has to approve single source procurements or actions beyond

existing procedures? *(<u>Guidance for assessors:</u> Try to establish the extent to which the minister was advised – sought advice on these decisions from the point of view of i.a. legality, economy, transparency, prevention of conflicts of interest and good governance.)*

d. What procurement delegations are in place to subordinate agencies? What are the contract threshold levels, how are these audited and overseen? What difficulties have been incurred, how have these been resolved and have the results been made public?
e. Are major procurements debated in and approved by parliament?

228) If it is not the tendering committee, to what extent is the decision-taker bound by the recommendation of this committee?
229) What mechanisms if any are in place in the MoD to determine the quality of procured goods or services?
230) What procedures are followed when specified requirements are not met?
231) Is there a complaints/appeals procedure ensuring that the persons concerned have the right and are practically empowered to uphold/defence their interests?
    a. If yes, is the appeals/complaints authority sufficiently independent of the first instance decision-maker?
    b. Are there open and transparent recruitment processes for staff members?
    c. Does the complaints body have sufficient human and financial resources to ensure that its functions are effectively discharged?
    d. What is the number of staff a) planned/foreseen and b) actually employed?
    e. Does the institution have adequate premises and equipment?
    f. Is systematic training provided regularly to staff members?
    g. If yes: To what extent are training activities funded by the national government/external donors?
    h. Do the appeals/complaints procedures include hearings and are they open to the public?
    i. Is the complaints/appeals procedure efficient (cheap and fast)?
232) When procurements are of a particularly high value, is there an enhanced integrity procedure? Has the State Audit Institution criticised the ways in which MoD procurement processes have been implemented?
    a. If yes, what was the content of the criticism?
    b. How has the MoD (if at all) responded to the criticism?
233) Have the media, the civil society, international organisations or others raised serious concerns about general arrangements for procurement/the ways in which MoD procurement processes have been implemented?
    a. If yes, what was the nature of these concerns?
    b. How has the MoD (if at all) responded to these concerns?
234) What effects (good and bad) has the international community had on the establishment and development of the legal and administrative arrangements for public procurement? *(<u>Guidance for assessors</u>: consider*

the extent of support and credible and consequent application of requirements and conditionalities).

235) Have there been serious political attempts to upgrade, or conversely to reverse procurement arrangements?

a. *For assessors in EU member states*: Have there been any noteworthy developments concerning procurement arrangements in the period after accession to the EU? *(Guidance for assessors: please describe briefly possible reform setbacks or reform progress).*

11.3.3 Questions asked to members of the national procurement authority

237) What are the main types of breaches of the public procurement legislation in your country?

238) What do you perceive to be the main causes of these types of breaches?

239) Are there any traditional/informal practices leading to violations of the public procurement legislation in your country?

240) How would you assess the political will to uphold and enforce "European standards" of public procurement legislation in your country?

241) What are the greatest obstacles which your institution faces in its work?

242) What measures would most help to reduce violations of the public procurement legislation in your country?

243) What may possibly hinder the introduction and effective use of such measures?

11.3.4 Questions regarding asset disposal

244) What is the legal framework for asset disposal?

245) Does the MoD have written policies/plans for asset disposal?

a. If yes, are the plans/policies published? How widely?

246) How is asset disposal organised within the MoD?

b. Does the MoD have internal units/persons responsible for asset disposal?

247) Is there an obligation to a) appoint an independent evaluator to assess the value of the relevant assets and b) to establish a committee for asset disposals?

a. If yes, is the decision to appoint an independent evaluator and to establish a committee taken before the disposal initiative is published/the disposal process starts?
b. Are steps taken to ensure that the independent evaluator is licenced/certified?
c. How are committee members selected? Who makes the selection decision and on whose advice?
d. Is there a mechanism preventing individuals who are in conflict of interest situations or lacking expertise from participating in the committee?
e. Is the recommendation/decision of the evaluation committee stated and justified in writing, and is it published, for instance on the website of the ministry?
f. Are complete and sufficiently detailed written records kept (on paper or in electronic form) of each asset disposal?

i. If yes, are the records properly filed and readily available for later use?

248) Who makes the final disposal decision: the disposal committee, an authorised official, the minister or the government?
   a. If it is not the disposal committee: is the decision-taker bound by the recommendation of this committee?

249) Is there a reporting and accounting system for the proceeds from the disposed assets
   a. If yes is the system actually adhered to?
   b. Are the reports publicly available?
   c. Is the asset disposal money returned to the Treasury?
      i. How is this reported?
      ii. Are such reports publicly available?

250) Has the State Audit Institution criticised the ways in which the MoD has disposed of military or other assets?
   a. If yes, what was the nature of the criticism?
   b. How has the MoD (if at all) responded to the criticism?

251) Have the media, the civil society, international organisations or others raised serious concerns about general arrangements for assets disposal /the ways in which MoD has disposed of military or other assets?
   a. If yes, what was the nature of these concerns?
   b. How has the MoD (if at all) responded to these concerns?

Legislation to be consulted:

Law on Public Procurement and any supporting secondary legislation; Public Procurement Manual of the MoD.

12 Human resources management (HRM)

12.1 Why are HRM arrangements important to building integrity?

The main role of the civil service and security sector organisations is to uphold constitutional values, and to protect the general interests and security of the State as defined by law. HRM arrangements will significantly influence the extent to which this role is fulfilled. A potential conflict may arise between loyalty to the government of the day and loyalty to constitutional obligations. Undue politicisation may place civil servants in particular as well as military personnel, especially senior officers, in difficult relationships with their political masters, and hence threaten their impartiality and be loyalty divisive.

12.2 HRM: The normative standard

12.2.1 Separation of politics and administration

According to a widespread perception in European countries efficient, professional and impartial performance of the public administration and the armed forces is only possible when there is a strict separation between politics and administration and between politics and the military; *i.e*. there are clear and universally accepted rules for determining which positions belong to the political sphere and which belong to the administrative/military. The separation between politics and administration and between politics and the military involves the basic assumption that within the public domain there are various main entities, which although closely interdependent, differ in nature, have a different underlying logic, and have different sources of legitimacy. Politics are based on public confidence expressed in free political elections, and validated after each political term. Administration and military are based on merit and the professional capability of civil servants and military personnel as verified in competition for entering their respective organisations, in accordance with the terms laid down by law and/or regulations.

12.2.2 Recruitment and promotion

It is widely recognised that merit and bureaucratic professionalism have not only been necessary underpinnings of a good and effective public administration; an impartial bureaucracy, professionally competent and sufficiently independent to "speak truth to power", has been a cornerstone of the system of democratic government for the civil service whereas the military are normally aligned with the Head of State and are a-political.[71] In probably most countries in the OECD area, the merit principle is the foundation of staffing in the civil service and military organisations. For EU candidate countries a professional public service and hence a merit-based

[71] Farazmand, Ali (1997), "Professionalism, Bureaucracy, and Modern Governance: A Comparative Analysis", in Ali Farazmand (ed.) *Modern Systems of Government. Exploring the Role of Bureaucrats and Politicians,* London: Sage Publications.

recruitment system are necessary prerequisites for meeting the Copenhagen[72] and Madrid criteria[73] for accession.[74] Thus, the European Partnerships oblige the governments of (potential) candidate countries to "improve recruitment procedures based on objective and merit-based criteria, ensuring transparency and prompt appointment of sufficiently qualified civil servants [and to] harmonise the civil service laws in order to build an accountable, efficient civil service, based on professional career development criteria."[75]

The merit principle means that appointments should be non-partisan and made in a fair and open procedure based on an assessment of competence and ability to do the job. In brief, appointments should aim at selecting the best available person. If several candidates are competent, the post must be offered to the person who would do it best. Determining merit includes assessment of the applicant's education, skills, knowledge, prior work performance and years of continuous service in the public service. Applicants are assessed for merit against the selection criteria required for the post, or promotion/command grade in question. The most meritorious candidate will be the one whose performance most closely satisfies the position's most critical elements.

The entire procedure must be conducted in a transparent and public competitive process which allows applicants to be rated and ranked relative to one another. The selection process must be objective, impartial and applied consistently to be considered fair. The recruitment procedure should also be legally pre-determined and the outcome should be subject to review by independent administrative bodies and at a minimum by the courts. Furthermore, the process must be open, meaning that job opportunities must be advertised publicly and potential candidates must be given the necessary information about the position and its requirements as well as about the selection process.

A distinction may be made between recruitment to:

- entry positions
- higher positions
- top-level positions.

---

[72] The June 1993 European Council in Copenhagen concluded *i.a*. "Membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities, the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union. Membership presupposes the candidate's ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union."

[73] Membership criteria also require that the candidate country must have created the conditions for its integration through the adjustment of its administrative structures, as underlined by the Madrid European Council in December 1995. While it is important that European Community legislation is transposed into national legislation, it is even more important that the legislation is implemented effectively through appropriate administrative and judicial structures. This is a prerequisite of the mutual trust required by EU membership.

[74] See OECD (1998), "Sustainable Institutions for European Union Membership", *SIGMA Paper* no. 26, and OECD (1999), "European Principles for Public Administration", *SIGMA Paper* no. 27.

[75] See EC Council Decision.

Whereas the merit principle should apply fully in the two former cases, there may be a need for special provisions for top positions located at the interface between politics and administration where it is necessary to balance elements of the merit principle with political requirements and realities. A solution which has been implemented in some countries is that the merit principle and not the principle of political appointment applies fully in the recruitment and selection stage, while political aspects are taken into account to a certain extent with regard to termination of employment. The relaxation of the merit principle in this case should be consistent with the administrative tradition/culture of the country.

12.2.3 Termination of employment

Civil service and military employment is different from private law employment because civil servants and military personnel are involved respectively in exercising public power and using lethal force to protect the State. Therefore, in many systems the stability of employment is of special significance – some systems even provide for 'life time' tenure or extended contract periods.

The following types of termination of service should be distinguished:

- Retirement
- Dismissal
- Expiry of fixed-term appointment
- Extraordinary termination of appointment of top-level civil servants in ministries and other administrative bodies.

Civil servants and military personnel should retire:

- when he/she reaches the legal retirement age
- if he/she is permanently incapable because of invalidity as established by official medical expertise
- at the agreed contract termination point.

Civil servants and military personnel can be dismissed/released if:

- the legal preconditions for employment have ceased to exist (e.g. citizenship of the country in question, criminal punishment)
- he/she agrees with the employing institution on termination of employment
- he/she resigns, although military requirements may dictate that termination of employment may be delayed/refused subject to operational or service manning requirements, or the need to amortise specialist training
- he/she cannot be reassigned in cases of restructuring or abolition of civil or military bodies
- he/she fails the achieve the required standard during the probationary period

- he/she fails to achieve the required professional development standard required by mandatory competency/security testing during the period of service
- he/she has been found guilty of misdemeanour requiring dismissal following the appropriate civil or military disciplinary procedure.

In the case of fixed-term appointment, employment should end automatically at the end of the specified period of office.

12.2.4 Rewards system

It is largely accepted that salary predictability is one of the key principle that should form the basis of the salary system in public administration and military institutions.[76] It entails that the salary structure should be stipulated in the legal framework and the variable components of the salary reduced to the lowest possible level. The basic salary (related to the job-grading process) should constitute the major part of the remuneration.

It is considered a weakness of the salary system if heads of institutions have the authority to decide on adding bonuses to the basic salary at their own discretion, without clear conditions set in the legal framework. This situation might lead to abuses from the heads of institutions in that they might apply the bonuses in such a manner that they differentiate between civil servants without using objective criteria or proper performance management schemes. As a consequence, there may be undue influences on civil servants and integrity-related issues might arise.

The heads of the public administration and military institutions have at their disposal a variety of tools to reward or motivate their subordinates. These tools, whether monetary or non-monetary, should be employed on the basis of objectivity criteria to stimulate civil servants and military personnel in their performance of the job. In cases when performance management practices are used to ensure the personal fidelity of civil servants and military personnel to their superior, the system as a whole produces adverse effects and besides negatively influencing the overall performance of the staff, can have an undesired effect on the integrity of civil servants and military personnel.

12.2.5 Whistleblowing

The protection of whistleblowing is an international requirement, for instance under the United Nations Convention against Corruption (2003) and the Council of Europe Civil Law Convention on Corruption.

Textbox 7 International requirements regarding whistleblowing

[76] For a broad explanation of the predictability principle in public administration see OECD (1999), "European Principles for Public Administration", *SIGMA Paper* no. 27.; for a narrow view of the predictability principle in the salaries area see Cardona, Francisco (2006), "Performance Related Pay in the Public Service in OECD and EU Member States," Paris: SIGMA. An analysis of the implementation of this principle in the salaries' area can be found in Meyer-Sahling, Jan (2012), "Civil Service Professionalism in the Western Balkans", *SIGMA Paper* no. 48, p. 55.

The United Nations Convention against Corruption – article 33
Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.

Council of Europe Civil Law Convention on Corruption – article 9
Each Party shall provide in its internal law for appropriate protection against any unjustified sanction for employees who have reasonable grounds to suspect corruption and who report in good faith their suspicion to responsible persons or authorities.

For whistle-blowing to be an effective instrument in fighting corruption, the definition of the activities that can be reported has to be adequate, the procedures that should be followed have to be clear, and disclosures made in good faith have to be protected; although military personnel are subject to additional laws and codes of conduct to meet these requirements, any regulation should deal with the following aspects:

- A definition of the forms of conduct that are to be (must be) reported; this should not only include breaches of the law but should go further and include misuse of official information or abuse of public office, negligent or improper management of public funds or property, trying to influence improperly other public servants or office holders, threatening a person because he/she has made or may make a disclosure according to the respective regulations.
- Whether reporting is mandatory or optional in the specific case.
- The authority to whom, in the first instance, the misconduct is to be reported (internal report).
- The authority to whom the conduct is to be reported in the event that the public servant who should be contacted in the first instance is disqualified (because, for example, the official, civil or military, is a party to the breach of integrity).
- The possible appointment of a system of confidential integrity counsellors in each institution.
- An obligation for the competent authority within the organisation to investigate the allegation and to report the results of the investigation to the informant within a reasonable period of time.
- An opportunity for the public servant to report the breach to an external and independent agency (ethics committee, ombudsman) in the event that the authorities process or assess the internal report in an incorrect manner in the opinion of the informant.
- This agency/ committee investigates the report and advises the responsible institution.
- Legal protection for public servants who report a breach in good faith and in accordance with the procedure, and for confidential counsellors who perform their duties in accordance with the regulations.

12.3 Questions to be addressed in the needs analysis

12.3.1 General questions

252) When and why was the current legal framework for civil servants/military personnel introduced?
253) What was the role of the international community in the preparation and adoption of the legal framework?
254) To what extent does the general civil service legislation apply to the MoD?
255) Is the number of civilian and military personnel accurately known and publicly available?
256) Is special attention paid to the selection, time in post, and oversight of personnel in sensitive positions, especially officials engaged in procurement, contracting, financial management, and commercial management? What is the process?
257) Have there been serious political attempts to strengthen, or conversely to weaken arrangements for meritocratic HRM in the civil service generally and in the MoD/the armed forces specifically?
    a. *For assessors in EU member states*: Have there been any noteworthy developments concerning procurement arrangements in the period after accession to the EU? *(Guidance for assessors: Please describe briefly possible reform setbacks or reform progress).*

12.3.2 Questions regarding separation of politics and administration

258) Is there a clear distinction between political and civil service/military positions? *(Guidance for assessors: Describe possible differences between the MoD and the civil service generally).*
259) Which positions in the MoD and other defence sector organisations belong to the "political sphere"?
260) In which positions in the MoD and other defence sector organisations was there a change of personnel during the last change of government?
261) Are there adequate legal regulations for the impartiality of civil servants/military personnel? *(Guidance for assessors: Describe possible differences between the MoD and the civil service generally).*

12.3.3 Questions regarding recruitment and promotion

262) Is merit-based open competition mandatory to enter the civil service/MoD/other security sector institutions? *(Guidance for assessors: Describe possible differences between the MoD and the civil service generally).*
263) How and by whom is the professional quality of candidates for civil service/MoD/military positions (at all levels) decided? (*E.g*. tests, interviews, ranking of candidates, written justifications, appointment panels, managers individually). Do these procedures adequately ensure the implementation of the merit principle? *(Guidance for assessors: Describe possible differences between the MoD and the civil service generally).*

264) What are the rules and mechanisms for promotion (for both civil servants and military personnel)? Do these procedures adequately ensure the implementation of the merit principle? *(Guidance for assessors: Describe possible differences between the MoD and the civil service generally).*
265) How are appointment decisions reviewed and by whom? *(Guidance for assessors: Describe possible differences between the MoD and the civil service generally).*
266) Do these procedures adequately ensure the implementation of the merit principle? *(Guidance for assessors: Describe possible differences between the MoD and the civil service generally).*
267) What is the role of political affiliation/patronage in career progression? *(Guidance for assessors: Describe possible differences between the MoD and the civil service generally).*
268) Have the media, the civil society, international organisations or others raised serious concerns about general arrangements for/practice concerning recruitment and promotion/MoD recruitment and promotion decisions?
    a. If yes, what was the nature of these concerns
    b. If applicable, how has the MoD (if at all) responded to such concerns?

12.3.4 Questions regarding termination of employment

269) Is there a right to job permanence, or known fixed contracts? *(Guidance for assessors: Describe possible differences between the MoD and the civil service generally).*
270) What protection is there against discretionary/arbitrary dismissals? *(Guidance for assessors: Describe possible differences between the MoD and the civil service generally).*
271) What are the pension rights of personnel following retirement or dismissal? Are personnel who are released from service suitably compensated and supported if injured (operationally or otherwise) whilst in military service; do spouses or partners receive suitable support and compensation?
272) Have the media, the civil society, international organisations or others raised serious concerns about general arrangements for/actual practices concerning the dismissal of civil servants generally and MoD and military personnel in particular?
    a. If yes, what was the nature of these concerns?
    b. If applicable, how has the MoD (if at all) responded to such concerns?

12.3.5 Questions regarding the rewards system

273) Is the salary structure for public officials in the Ministry of Defence/armed forces based on the predictability principle?
274) Are salary schemes, other than the normal schemes, applied for different categories of officials within the MoD?
    a. If yes, what is the proportion of these alternative salary schemes compared to the normal scheme? Please elaborate

on possible influences on the fairness of the salary scheme and implementation practice.

275) Are bonuses applied to the salaries, based on the decisions of the head of the institution?
    a. If yes, are the conditions for applying the bonuses sufficiently clear to avoid misuse by the heads of institutions?
    b. What is the percentage of these bonuses compared to the basic salary?
    c. If applicable, do these bonuses distort the salary structure in general?

276) Are there rules limiting the size of the compensation that can be received for ancillary employment?
    a. Do these provisions prevent a public official from receiving unreasonably high compensation for such employment?

277) Are rates of pay (and pensions) and allowances for all civilian and military personnel openly published? Do they receive the correct pay on time?

278) How are the numbers of personnel and their required monthly salaries made available publicly, in order to indicate whether there are non-existent soldiers on the payroll? Are chains of command separate from chains of payment?

279) Is a sound performance management system in place? Is this system correctly implemented in practice?

280) Are the results of performance appraisal objective?
    a. If yes, do the incentives based on these results support the improvement of performance in the institutions?
    b. If not, are the incentives distributed to civil servants in an objective way? Does the distribution modality create discontent in public officials and potentially influence their integrity?

281) Have the media, the civil society, international organisations or others raised serious concerns about arrangements for/actual practices concerning remuneration and other rewards systems in civil service generally and the MoD/the armed forces specifically?
    a. If yes, what was the nature of these concerns?
    b. If applicable, how has the MoD (if at all) responded to such concerns?

12.3.6 Questions regarding whistleblowing

282) Are Defence Ministry officials and armed forces personnel encouraged to report perceived corrupt practices? If so, describe how this happens.

283) Do “hotlines” exist for whistleblowers for reporting bribery and anti-corruption concerns?

284) What protection mechanisms for whistle-blowing are there, how well do they work, and what is the extent of their application?

285) Have the media, the civil society, international organisations or others raised serious concerns about general arrangements for/actual practices concerning whistleblowing/MoD practices regarding whistleblowing?
    a. If yes, what was the nature of these concerns?

b. If applicable, how has the MoD (if at all) responded to such concerns?

12.3.7 Questions asked staff members of the civil service authority or similar institution

286) To what extent is the principle of meritocratic HRM actually adhered in the public service of your country?
287) What are the main types of violations of this principle?
288) What do you perceive to be the main causes of these types of breaches?
289) Are there any traditional/informal practices leading to violations of the merit principle?
290) How would you assess the political will to uphold and enforce the merit principle?
291) What are the greatest obstacles which your institution faces in its work?
292) What measures would most help to reduce violations of the merit principle in your country?
293) What may possibly hinder the introduction and effective use of such measures?

Legislation to be consulted:

Civil Service Law and secondary legislation which concerns procedure for open/internal competition, promotion and termination of employment; Legislation on whistle-blowers' Protection (if any).

Annex 1

Criteria for assessing institutional adequacy

Independence

We may distinguish between five aspects of independence:

- *Decision-making autonomy* which refers to the extent to which the government/ministries may influence the state body's decisions, or put differently: the potential discretion an agency may have because of the decision-making competences given to it. However, even when an agency has full decision-making autonomy the government/ministries could still influence its decisions by restricting other types of autonomy, *i.e.* managerial, organisational, and financial independence. In other words, the extent to which an agency may actually decide issues independently is contingent on the other aspects of autonomy outlined below.
- *Managerial autonomy* which concerns the extent to which it may make decisions concerning the use of inputs (mainly personnel, finance, technical infrastructure) in the design of its internal organisation.
- *Organisational autonomy* which refers to the extent to which a state body is shielded from influence by the government/ministries through organisational arrangements and arrangements regarding the appointment of the agency leadership. The extent of organisational autonomy is determined by the answers to the following two questions:

    - *Is the agency integrated in or separated from the ministry?* An agency organised outside the ministry enjoys greater organisational independence than an agency that is part of a ministry.
    - *By whom and on what conditions is/are the agency director/board members appointed?* It will increase an agency's organisational independence if:

        - two or more decision-makers are involved in the appointment procedure (for instance the government collectively and not only a single minister)
        - the agency director/board members is/are appointed for life, or for a relatively long fixed term and not for a period of only two or three years
        - the terms of office of the director/board members do not coincide with the election cycle
        - the appointments are not renewable
        - there are explicitly stated professional criteria for the appointment of the director/board members
        - the board members cannot simultaneously hold other government offices

        - the director/board members can only be dismissed for reasons not related to policy, and thus be protected from arbitrary removal.

- *Financial autonomy* which refers to the extent to which the agency depends on governmental funding or own revenues for its financial resources.
- *Legal foundations of autonomy* Legal autonomy refers to the extent to which the agency's legal status or the nature of the legal framework regulating the body prevents the government/ministries from altering the allocation of competencies or makes such changes more difficult. The extent of legal autonomy is determined by the answers to the following two questions:

    - *Is the agency a separate legal person?* The legal autonomy is enhanced if the agency is a legal person separate from the state.
    - *At what normative level are key elements of the agency's independence from the government/ministries regulated?* If key elements of the agency's independence are stipulated by governmental regulation, the government can easily rescind this as parliamentary action is not needed. Thus, the agency's legal autonomy is enhanced if significant aspects of independence are regulated by constitutional provisions or ordinary statutes.

Competencies

The following aspects of the agency's competencies should be assessed:

- The legal basis, *i.a*. normative level and clarity and completeness of provisions
- Scope of tasks
- The legal/constitutional nature/effects of the agency's decisions (guiding or legally binding); sanctions for/consequences of non-compliance

Capacities

A high-quality legal framework may be a necessary but insufficient prerequisite for having a well-functioning system of integrity promoting agencies. The actual implementation of anti-corruption legislation is no less important than its adoption. The efficiency and credibility of integrity-promoting agencies are determined to a large extent by characteristics of the wider political and administrative systems, by organisational and cultural factors and by the availability of sufficient human and financial resources. Regarding the actual capacities of the agencies in questions the following factors should be assessed:

- Number of staff
- Education and experience of staff
- Total budget of the agency, extent of donor support
- Number of staff participating in training
- Adequacy of premises and technical equipment

Transparency and accountability

It is a longstanding principle of law that justice should not only be done, but should manifestly and undoubtedly be *seen* to be done. The principle of open justice in its various manifestations is the basic mechanism of ensuring judicial accountability. Corruption and abuse of power are facilitated by *i.a*. opaque legal systems entailing that both parties and the public have trouble finding out what is going on. When it comes to anti-corruption bodies, transparency is important in order to establish the extent to which they fully use, or possibly abuse their competencies, capacities and independence.

The transparency of the agency is enhanced if there are rules obliging it to *i.a.*:

- publish regular reports on its activities
- make data on individual decisions and general rules publicly available
- release statistical information of a general nature concerning its field of responsibility
- publish information on economic interests, previous employment, honorary offices etc. of staff members.

The accountability of an agency is enhanced if it is subject to decision-making procedures/methods ensuring high quality performance. If the agency has to report to parliament, a key issue is whether it has to submit its report directly or via the government/ministries.