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The Sudanese Legal Framework: The Requirements for Building an Effective Anti-Corruption Body

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Contents

Introduction

Corruption is a global phenomenon, and is one of the challenges facing many countries. Sudan is one of these countries affected by corruption and is seen as one of the countries in which corruption prevails. According to the Corruption Perceptions Index issued by Transparency International, Sudan was ranked 172 out of 180 in 2019, scoring only 16 points on the index out of 100 to be classified as one of the most corrupt countries.1 This index ranks countries according to perceived levels of corruption in the public sector, based on the statements of experts and businessmen.

Sudan has ratified the United Nations Convention against Corruption (UNCAC) on September 5th, 2014.2 However, anti-corruption efforts in Sudan do not appear to be sufficient to combat corruption prevalent in all local, state and federal levels, which is spread in various sectors. Recently, some attempts to establish a national anti-corruption body were undertaken, the law on the National Commission for Transparency, Integrity and Combat of Corruption (2016) was approved, which provides for the goals, functions and powers of the Commission. It also identified a group of acts and deemed them a kind of corrupt practices.3 However, Sudan's ranking on the global corruption perceptions indicators did not improve with these measures that seemed to many to be sham rather than actual measures intended to combat corruption.

This paper aims to clarify the legal framework required to establish anti-corruption body that is able to do its job efficiently, and to clarify whether the current laws in Sudan are sufficient to form a legal framework that prevents corruption, and is able to address

1. Transparency International, Corruption Perceptions Index, 2019, last visited March, 2020, available at https://www.transparency.org/cpi2019.
2. United Nations Office on Drugs and Crime, United Nations Convention against Corruption, Status of Signature and Ratification, last visited March, 2020, available at: https://www.unodc.org/unodc/en/corruption/ratification-status.html
3. The Transparency, Integrity and Anti-Corruption Commission Law of 2016.

the various acts that the United Nations Convention against Corruption makes it a must of sates to criminalize, and the acts that international experience in the fight against corruption has shown the need to ban. This paper sheds light at the outset on the definition of corruption, its types, and its causes. Then it shows the position of anti-corruption bodies vis-à-vis the institutions that make up the national integrity system pillars. Then it addresses the functions of the bodies, and the different models and styles they have, and the role they can play, and addresses then some of the reasons and the factors underlying the success of anti-corruption bodies, such as the need to coordinate with other government institutions, and the need for their independence. Since the independence of the bodies is of importance, the paper reviews in details the methods of appointment of the leaders and members of anti-corruption bodies, and eligibility criteria to fill positions in them. It then briefly addresses the necessity for anti-corruption bodies to do what their tasks require, in terms of fighting corruption within the framework of what human rights principles and conventions allow. Then the paper deals with the extent to which the 1991 Criminal Law complies with the articles of the United Nations Convention against Corruption, which require the criminalization of some acts.

Definition of Corruption

Corruption is defined in various ways, all of which lack certain aspects as there is no complete, comprehensive definition therefor. It is very difficult to find a definition that includes and encompasses all forms of corruption and its types, even if that does not preclude identifying cases of corruption. So it was said that, despite the difficult description of corruption, it can be recognized when encountered.4 The World Bank uses the most common definition of corruption, which defines corruption as "the misuse of public power to achieve a private interest".5 Talking about public authority in this definition does not include corruption in the private sector.

Transparency International defines corruption as "an abuse of entrusted power for private gain".6 Given this definition, it can accommodate a wide range of actions, yet it is based on the three specific elements in» misuse", "authority entrusted" and» private gains", which may mean precluding certain behaviors that should be considered as corruption. For example, the use, or abuse of a power that is unlawfully sought and not delegated to a person can lead to corruption.7 The interest may not be specific to the person himself.

Although there is no generally agreed definition of corruption, there is agreement that there are different forms of corruption. Corruption includes many types of practices such as bribery, extortion, favoritism, misuse of information, and abuse of discretion powers. As for

4. Vito Tanzi, Corruption around the World: Causes, Consequences, Scope and Cures, p 8, (1998). Available at: https://www.imf.org/external/pubs/ft/wp/wp9863.pdf. (Last visited May 22, 2019).
5. Adam Graycar, Corruption: Classification and analysis, p 89, (2015). Available at: file://hd.ad.syr.edu/01/568a51/Documents/Downloads/Graycar Corruption classification and analysis (1).pdf (last visited May 22, 2019).
6. John D Sullivan, Corporate Ethical Compass - Anti-Corruption Tools, Values and Principles, Ethics, and Corporate Governance, at: http://documents.worldbank.org/curated/en/430201468336290241/pdf/477910NWP0Focu00Box341959B00PUBLIC0.pdf. 2015
7. Final report of the Advisory Committee of the Human Rights Council on the topic of the Negative Impact of Corruption on Enjoying Human Rights, p 4, January 2015.

activities that can take place during its exercising, these are various activities such as employee recruitment, procurement, and organizing processes such as issuing permits and licenses.

Corrupt practices that occur during the conduct of diverse activities may occur in numerous and different sectors, such as health, energy, tax administration, or judicial institutions, and they occur in different places and regions as no party or place is completely immune to such practices. For analytical purposes, instead of using the umbrella term of corruption to describe a set of transactions that lack integrity, these transactions can be defined under the framework of type, activity, sector, and location.8 For example, there may be bribery (type), in purchases (activity), in mining (sector), in a specific mine in name (place). Or that there is favoritism (type), in the appointment of employees (activity), in the field of education (sector), in a specific locality by name (place).

The United Nations Convention against Corruption did not define corruption. Rather, it defined specific acts and incriminated them, and called on states parties to criminalize them. So did the European Union, and the Organization for Economic Cooperation and Development, which consists of 30 members, including Australia, Canada, Japan, Korea, Mexico, the Netherlands, Turkey, the United States and other European countries. These organization have dealt with the issue of definition by describing specific acts and criminalized them, and not by developing a general definition of what is called the crime of corruption.9 On the other hand, the countries of the Istanbul Plan of Action took a different approach by defining corruption in

8. Adam Graycar, Corruption: Classification and analysis, p 89, (2015). Available at: file://hd.ad.syr.edu/01/568a51/Documents/Downloads/Graycar Corruption classification and analysis (1).pdf (last visited May 22, 2019).
9. Gemma Aiolfi et al., Corruption a Glossary of International Standards in Criminal Law, p21, (2008).

their laws as a specific crime.10 The adoption of this approach and the definition of corruption as a specific crime has resulted in very few prosecutions or convictions for this crime.11

Types of corruption

Knowledge and awareness of the different types of corruptionis important as much as it provides in terms of an understanding of the phenomenon of corruption, and as far as it explains the full structure of the phenomenon of corruption, and thus contributes to laying the foundations for treatment. Identifying the different types of corruption can lead to a series of questions, such as: to what extent do the different types of corruption overlap? Do all types of corruption stem from the same underlying causes or do different types of corruption result from different factors? Do different forms of corruption have different effects on society or the political system? The answers to each of these questions can have a constructive effect on creating more efficient anti-corruption policies. With regard to major types of corruption, we find that Professor Boris Begovic summarizes in three types as follows:12 the first type is corruption that enables a citizen or a legal person to obtain their legal rights. This type of corruption is free from violating the law, except for the presence of bribery, or inequality between service seekers. For example, if a person bribes a government employee to obtain a passport, while there are no legal obstacles preventing the issuance of such passport; then the person is involved in this first type of corruption, and the recurring form of this type of corruption is to offer bribes to officials to overcome the difficulty of obtaining

10. Boris Begovic, Corruption: Concepts, types, causes and consequences, p4, (2005), https://www.cadal.org/documents/documento_26_english.pdf (last visited May 8, 2019).
11. Gemma Aiolfi et al., Corruption a Glossary of International Standards in Criminal Law, p21, (2008).
12. Boris Begovic, Corruption: Concepts, types, causes and consequences, p4, (2005), https://www.cadal.org/documents/documento_26_english.pdf (last visited May 8, 2019).

a service that is legal to to be provided with. The frequency and spread of this kind of corruption is a good indicator of a weakness and lack of administrative efficiency of the state, and sometimes the forms of deficiencies in the provision of administrative services may be deliberate. An example of this type of corruption is what the health sector suffers in Bangladesh, where 90.9% of respondents, among healthcare service
users, indicated that "the reasons for paying bribes are that services cannot be accessed without bribes".13 When discussing this type of corruption, it is necessary to note that the money offered as bribes may not be large sums, but it may be difficult to bear the costs for those who have to pay it. Especially when we realize that the poor segments of societies are the most vulnerable to this type of corruption, as it is possible for others to resort to favoritism to avoid the lengthy and late procedures.

The second type of corruption is the one that leads to the violation of legal rules or leads to the biased application of the legal rules, and is referred to as administrative corruption. If the applicable regulations do not allow a person to obtain a specific license, then he resorted to bribery to obtain it, then he would have engaged in this type of corruption. Samuel Huntington defines administrative corruption in a more comprehensive manner as "a set of behaviors by a group of public officials who ignore rules and regulations to achieve goals other than institutional ones".14 In countries where corruption is prevalent, some citizens may think that it is in their interest not to enforce the law because laws and policies are so bad that it is not necessary to comply with them, so citizens see corruption as the best solution. This type of corruption confronts community members daily when dealing with government agencies such as the tax administration,

13. NahitunNaher et al., Irregularities, informal practices, and the motivation of frontline healthcare providers in Bangladesh (2018).
14. Boris Begovic, Corruption: Concepts, types, causes and consequences, p4, 2005

departments issuing licenses and exemptions, police departments, traffic police, hospitals and other public facilities.

According to Begovic, the third major type of corruption is grand corruption, or summit corruption associated with senior politicians and government policy and decision-making, which is also known as state takeover. One of the definitions of state takeover is the formulation of state laws, policies, and regulations in the interest of private com

panies by providing unlawful private gain to public officials.15 It is also defined by Transparency International as the use (by individuals, institutions, companies, or powerful groups within or outside the country) of corruption to shape the country's policies, legal environment, and economy in order to achieve their own interests.16 A good example of the state takeover is the situation in the Solomon Islands in the 1990s, where multinational corporations pressured and bribed key politicians to create an environment conducive to logging and weakening timber management at the national level. These multinationals have gained advantages such as reducing taxes on exports, deferring the ban on logging export and blocking moves to strengthen government oversight of foreign-controlled operations.17 This type of corruption aims to change the rules that govern the work of the state from rules that serve the public interest to rules that serve the interests of corrupt officials and those who deal with them. "The main difference between corruption and state takeover is that most types of corruption spoil the implementation of laws, rules and controls through acts of bribery, while state takeover involves corrupt attempts to influence the way laws, rules and regulations are

15. Maurice O. Dassah, Theoretical analysis of state capture and its manifestation as a governance problem in South Africa, The Journal for Transdisciplinary Research in Southern Africa14(1), a473, (2018).
16. Transparency International, the Anti-Corruption Plain Language Guide, (2009).
17. Transparency International, the Anti-Corruption Plain Language Guide, (2009).

promulgated, making it synonymous with legal corruption".18
Corruption classifications differ according to the different criteria on which the classification is based, and in general it is not possible to completely separate these different classifications as they overlap and converge. The most prominent criteria by which corruption can be classified can be summarized from (as it was commonly classified in many writings dealing with corruption) as follows:

a. Corruption according to the sector to which those involved in corruption belong

Here, corruption can be divided into corruption in the public sector and corruption in the private sector.

Corruption in the public sector

Corruption in the public sector is corruption in which one of the parties is a government official or a state employee. This type of corruption is the focus of most studies on the phenomenon of corruption, and there is a widespread belief that, in order for the deal or transaction to be corrupt, the government represented by one of its employees or officials must be a party thereto, but this is not true.

Corruption in the private sector

This includes corrupt practices that take place between two or more parties, who do not include a government official or a public official. This type of corruption exsists in dealings of private companies, or in dealings between an individual and a private corporation. This type of corruption shows that employees are less loyal to their own organizations. Corrupt practices in the private sector are carried away from the public domain and outside government circles and impose

18. Maurice O. Dassah, Theoretical analysis of state capture and its manifestation as a governance problem in South Africa, The Journal for Transdisciplinary Research in Southern Africa 14(1), p473, (2018)

additional costs on some companies or individuals and contribute to the creation of a socio-cultural environment that encourages the spread of general corruption.

b. According to extent of corruption

Corruption was divided into two parts based on the size of the proceeds begot from it and the rank of officials involved in it.

Petty corruption

This usually involves junior employees and may aim to simplify complex procedures and provide routine services, and it may cause employees to deliberately complicate procedures so that they can obtain some personal benefits. Although the proceeds from this kind of corruption is smaller than the proceeds of grand corruption, but one can not be certain that its negative effects are less, especially if we take into account the possibility of its outbreak, the frequency of its occurrence and the direct impact on the poorest classes.

Great corruption

This type is related to senior employees and officials, large companies and businessmen, and to large deals such as arms deals, supply and contracting, and obtaining huge loans with low interest or without adequate guarantees. This is a type of corruption that includes what is known as the takeover of the state, and it may sometimes be associated with international bodies. The prevalence of this type of corruption indicates the weak accountability tools in the countries in which it is spread.

c. According to corruption domain

Corruption can be divided into domestic corruption and international corruption.

Domestic corruption

It is the one that takes place within the borders of the country and is limited to internal parties.

International corruption

Is the one which takes place outside the country's borders, or within the country's borders but involving a foreign party, but it is not right to classify all the corruption occurring within the country's borders and engaging a foreign party as international.

d. According to nature of relationship between parties to corruption

Corruption can be divided according to the nature of the relationship between its two parties to coercive corruption and conspiratorial corruption.

Forceful corruption

It is the case in which the applicant is forced and compelled to pay a bribe in order to obtain the service, otherwise their interests will be disrupted and they fail to obtain the service they deserve and which they meet all of its legal and procedural requirements. In this case, the relationship between the two parties is a relationship of submission that is not based on a desire to engage in the corrupt transaction.

Conspiratory corruption

It is the case in which the relationship between the two parties to corruption is based on an agreement between the two parties to

achieve their own interests. For example, the customs official who allows entry of some goods without fees or reduces fees in return for a consideration.

e. According to degree of organization

Corruption is divided according to the degree of its organization into accidental, systemic, and comprehensive corruption.

Accidental corruption

It refers to all corrupt practices and transactions that reflect the personal behavior of the individual involved in corruption more than refering to the administrative system in which these transactions are carried out.

Organized corruption

This is what spreads in institutions through the existence of prior procedures and arrangements through which it can be predicted how the transaction will end, the amount of the bribe and the mechanism of its payment. This type of corruption is managed by a group of individuals linked together and united by their mutual dependence on each other and their sharing of the proceeds.

Theories and attempts to explain the phenomenon of corruption

There are many attempts to explain the phenomenon of corruption. From the economic point of view, there are two basic visions to explain the existence of corruption. The first is the difference in information between heads (politicians and decision makers) on the one hand, and subordinates or agents (government employees) on the other.19 While politicians and decision-makers think that work is proceeding and transactions are carried out in accordance with

19. Boris Begovic, Corruption: Concepts, types, causes and consequences, (2005), https://www.cadal.org/documents/documento_26_english.pdf (last visited May 8, 2020).

the law and regulations, employees realize the real reasons behind the progression of work and the completion of transactions, which is the existence of payments they receive unlawfully to complete transactions and conduct business.20 Politicians and decision-makers, according to this theory, are well-intentioned, and do not know anything about the violations and misdeeds committed by their employees. Studies that follow this approach are characterized by their ability to explain many behaviors of government employees and explain administrative
corruption.21 However, this approach fails to explain political corruption, especially with the existence of lists of politicians from all over the world whose names have been associated with corrupt transactions.22 This approach concludes that corruption takes place outside the political process, in other words, corruption is not something that is organized and managed by politicians.23 This distinction between political and administrative corruption is ambiguous because in most political systems the separation between politics and administration is blurred.24

As a result of subsequent efforts, a new approach has emerged that sees corruption as one of the elements involved in shaping the political process, and therefore it depends on the state's political system, and is organized and managed according to the political system.25 According to this approach, corruption is a form of state revenue allocation by key officials, and the participation of government employees in corruption is usually according to the desire of corrupt key officials to ensure loyalty to themselves, as corruption is used as a tool to lure corrupt officials and to have them envolved and reminded later of what

20. Ibid.
21. ibid
22. ibid
23. ibid
24. Ange Amundsen, Political corruption: An introduction to the issues (1999).
25. Boris Begovic, Corruption: Concepts, types, causes and consequences, (2005)

they have committed, thus reducing the likelihood of disobedience from lower levels of corrupt government officials because they are captivated by their participation in corruption.26 If necessary, an uncooperative employee may be charged with involvement in corrupt transactions.27 This approach provides the basis for explaining the relationship between corruption and the political process, but it does not provide an analytical framework for situations where corruption prevails in the lower levels.28

Professor Begovic sees that the primary motivation for corrupt transactions is the narrow self interest of "persons in all circumstances imaginable act in economic rationality."29 This calls for another question. If self-interest is the motive behind corruption, then why do officials in some countries abuse their entrusted power to achieve more private gains than their counterparts in other countries? The answer appears to lie in balancing the costs of engaging in the corrupt transaction with the expected benefits.30 If the expected costs of committing the forbidden act are higher than the expected benefits, then the officials are not inclined to abuse the powers entrusted to them, and it should be noted that the intended costs and benefits are not only material, but may be psychological, social, as well as financial".31 The cost may include stigma and loss of a job, but the most obvious cost is the risk of exposure and punishment, and this depends primarily on the effectiveness of the legal system in the country.32 The risk of exposure and capture is higher in democratic systems where the press is free, and journalists and public interest groups can reveal infringements, as the free press plays a key role in the prevalence of the rules against corruption, and in the increase

26. ibid
27. ibid
28. ibid
29. ibid
30. Daniel Treisman, The causes of corruption: a cross-national study, p 400, (2000).
31. ibid
32. ibid

in the potential social cost of corrupt behavior.33 Moreover, civic participation, in its democratic form, can contribute to fighting corruption, because regular elections give the public the option to remove corrupt politicians.34 It is also noted that the exposure of corrupt officials to punishment is more frequent and
likely in economically advanced countries because "economic development increases the spread of education and literacy and prevents the personalization of relationships - each of these factors increases the likelihood that abuse of power will be noticed and confronted".35

Causes and motivating factors of corruption

The causes and factors that lead to the spread of corruption are many and diverse, some of them of a political, economic, legal, administrative or social nature. It cannot be asserted that there is only one factor behind corruption, but there may be many factors that cause corruption and encourage its spread and growth. The need and the sense of risk may be one of the intrinsic motives that encourage engaging in corrupt transactions, and the motivation may be greed and the desire to achieve quick financial gains. These are matters related to persons involved in corrupt transactions. After considering the various interpretations of the phenomenon of corruption, a number of answers can be offered to the question related to the causes behind corruption, including the following causes and factors:

The absence of the rule of law and the failure of everyone to submit to the same legal rules

The absence of the principle of separation of powers and the domination of the executive apparatus and its influence over other powers

33. ibid
34. ibid
35. ibid

Lack of political will to fight corruption

Absence or weakness of anti-corruption policies, or weak enforcement agencies

The absence of legal texts criminalizing various forms of corruption

There should be comprehensive anti-corruption laws and there should be a periodic review of the laws to put in place the necessary amendments to fill the gaps through which corruption is implemented, as experience and practice illustrate.

The absence of legal texts that protect whistleblowers

People who uncover violations and abuse of power that threaten the public interest, be they are employees or directors of government institutions or companies, or non-employees, must be protected from any attempt of vengeance they may be exposed to.

Absence of transparency and legal texts guaranteeing citizens access to information

The United Nations Development Program defines transparency as a phenomenon that refers to sharing information and acting in an open manner.36 It allows those who have an interest in a matter to collect information on this matter that may have a decisive role in uncovering defects and protecting their interests. Regimes with transparency have clear procedures for public decision-making, open channels of communication between stakeholders and officials, and put a wide range of information accessible to the public.37

Absent or weak accountability

Accountability is a concept that indicates that individuals and institutions (public, private and civil society) bear the responsibility to properly exercise their powers. In theory, accountability is of three types, diagonal, horizontal and vertical.38 In the public sector, diagonal accountability is achieved when citizens use government institutions

36. https://pogar.org/arabic/governance/transparency-and-accountability.html
37. https://pogar.org/arabic/governance/transparency-and-accountability.html
38. Transparency international, The Anti-Corruption Plain Language Guide, p2, (2009).

to better monitor state actions and behavior by participating in policy-making, budget preparation, and tracking of public expenditures.39 While the horizontal accountability subjects government officials to oversight by other government bodies, which creates a kind of checks and balances.40 As for vertical accountability, it involves holding officials accountable to voters or citizens through elections, a free press, an active civil society, and other similar channels.41 When accountability is absent or weak, this situation is conducive for widespread corruption.

Widespread governmental interference in economic activity

The restrictions imposed by governments for the purpose of regulation such as customs duties, import quotas, the list of permissible and prohibited imports or exports, setting the exchange rate, etc may be exploited by employees to enrich themselves. Here, it must be noted that the manner in which states operate and perform their tasks is much more important than the volume of public sector activity. Countries like Canada, Finland and Sweden are among the countries with some of the largest public sectors but are among the least corrupt countries.42 Some research indicate that the size and structure of government have an unclear effect on the level of corruption.43

39. ibid
40. ibid
41. ibid
42. Vito Tanzi, Corruption Around The World: Causes, Consequences, Scope and Cures, International Monetary Fund, p 10, (1998). Available at https://www.imf.org/external/pubs/ft/wp/wp9863.pdf (last visited May 31, 2019)
43. Eugen Dimant & Guglielmo Tosato, Causes and Effects of Corruption: What Has Past Decade's Empirical Research Taught Us? A Survey, Vol. 32, No. 2 Journal of Economic Surveys 335–356, p 8, (2018).

Complex rules, slow procedures, and braod discretion powers of officials

To control corruption, the rules regulating the activities should be clear and simple, and be published and people informed of them and be applied to all, without discrimination. These are the same prerequisites which must be provided in the procedures through which the rules are implemented. The existence of contradictory and inconsistent rules, and lack of knowledge of citizens of rules and procedures, in addition to government officials enjoying broad discretionary powers, and wide freedom to act and little accountability, all that encourages employees to exploit their positions for personal gain by accepting bribes.

Weak financial and administrative control bodies

Selection of employees based on criteria not related to competence and absence of training

Lack of interest in public service ethics and the lack of regulations and charters for professional behavior

Weak salaries of government sector employees

Anti-corruption bodies and their position in the national integri system

When talking about anti-corruption bodies, which are the institutional bodies concerned with combating corruption, it must be noted that these bodies are not the only bodies that work to combat corruption. Rather, the anti-corruption process is an integrative process in which the efforts of state institutions are combined. Anti-corruption bodies do not alone carry out all the roles and tasks required to achieve the anti-corruption process, but rather have their valued role within a framework known as the National Integrity System, in which anti-corruption bodies are one of its pillars, along with other institutions that have their roles assigned to them to combat corruption. National Integrity columns include, beside the key government institutions,

such as the legislative authority exercising oversight and legislative roles enabling them to contribute effectively to curb corruption, and the executive power, which the will of those who man it can have a clear impact in the fight against corruption, the judiciary, which can contribute to the fight against corruption through judicial oversight over the behavior of institutions and those in charge of them. There is also the public sector, which includes the public institutions and facilities that carry out administrative, economic or commercial activities, law enforcement institutions such as the police and the prosecution, and oversight institutions such as the Office of the Auditor General, which is responsible for reviewing all state agencies and ensuring that there are internal control systems in place and oversight in order to optimize the use of material and human potentials; and the anti-corruption bodies, whose role is dealt with in detail by the paper. There are also among the pillars of the National Integrity System non-state actors such as the media that can contribute to uncovering corruption, civil society that motivates and encourages individuals to confront corruption, as well as the private sector. All of these authorities, institutions and authorities have roles to play in the fight against corruption, and this clearly indicates that if anti-corruption bodies fully play their role without these authorities and institutions undertaking their respective roles, the desired results in the fight against corruption will not be achieved. After clarifying the position of the anti-corruption authorities as one of the pillars of the national integrity system that includes all the aforementioned bodies, the tasks of the anti-corruption bodies can be summarized to make the picture more comprehensive.

Functions of anti-corruption bodies

Key tasks and functions entrusted usually to the anti-corruption bodies are diverse and vary from country to country where these bodies arise, while some are assigned tasks relating to the stopping corruption and prevention against it, others are assigned some tasks related to investigation of allegations and suspicions of corruption, still some agencies may be assigned tasks of directing charges too.44 Despite this difference and diversity in the tasks assigned to each agency according to the data specific to each national context in which it arises, there are a number of tasks that are commonly assigned to anti-corruption bodies and its specialized agencies, and these tasks can be summarized according to what Francisco Cardona explained, as follows:45

1. **Development and adoption of anti-corruption policies.** This task involves developing and coordinating strategies and action plans for the fight against corruption, along with the coordination of processes of policy implemenetation and evaluation of its efficiency and effectiveness.
2. **Coordination between the state's anti-corruption institutions, monitoring corruption and identifying its presence through research.** To determine the extent of corruption and its common types, as the measures taken to combat corruption differ according to the type of corrupt practices prevailing. In addition to identifying the sectors most vulnerable to corruption, and the groups most vulnerable to and affected by it.

44. [sic]
45. The Centre for the Integrity on the Difference Sector, Anti-Corruption Polices and Agencies, p 5-6.

3. **Stopping corruption and prevention against it.** This is one of the most complex tasks as it includes a number of simultaneous and successive controls, measures and procedures which must be carefully coordinated to ensure their consistency and effectiveness. This includes preventive policies, such as some of the measures aimed at protecting and promoting the integrity of government officials, such as disclosure of the property to provide declarations that clarify the assets and properties of public employees, and to examine these statements and ensure their validity.46 It may include an assessment of the risks of corruption in specific sectors such as the private sector, or a particular activity such as public procurement, or aimed at reviewing the administrative procedures applied by institutions to ensure smoothness, or working to enable the public access to information of interest to them.47
4. **Education and raising awareness of corruption and methods of combating it.** This includes awareness and education in the field of fighting corruption and advocacy for integrity, including the development of training and education activities that target specific social groups or sectors. It may also include partnerships with civil society organizations.48
5. **Investigating cases of suspected corruption.** This task may be the most controversial task of anti-corruption bodies, as the investigative powers granted to anti-corruption bodies may collide with the powers of a number of bodies. It is customary in many legal systems that criminal investigations are conducted by the police, the public prosecution or investigating magistrates, and that the investigation and scrutiny of the decisions of the general managers and their

46. ibid
47. ibid
48. ibid

management of public funds are entrusted to the internal comptrollers and external auditors. Therefore, the collision of investigative powers granted to anti-corruption agencies with the powers of the police or the public prosecution may create a kind of conflict and conflict of roles and responsibilities. It is noticeable that the limits of investigative powers that some anti-corruption bodies enjoy differ and vary considerably from limited to broad. There is no consensus on whether anti-corruption agencies should have powers to enter areas commonly delegated to the police, the prosecution, or financial auditors.

6. **Prosecution and charges of corruption.** The granting of anti-corruption bodies the powers of bringing forth charges in corruption cases is a controversial issue. We, in principle, find that the defense of public interest in criminal proceedings is the responsibility of the prosecutor general.49 On the other hand, victims of crime also have inalienable rights, and it is unclear whether there is any additional value to be gained from granting the power to bring charges to anti-corruption agencies, and it may be useful to delegate anti-corruption agencies to pursue investigations against alleged corrupt persons in cases which the public prosecutor has decided to dismiss the case on grounds of insufficient investigation.50

Institutional arrangements and coordination as factors for anti-corruption agencies success

After clarifying the position of anti-corruption bodies within the pillars of the national integrity system, and then clarifying the tasks that these bodies usually carry out, it is important to deal with one

49. ibid
50. ibid

of the factors affecting the success of the bodies in their tasks, which are the institutional arrangements and coordination mechanisms between anti-corruption bodies and the authorities and institutions that carry out tasks related to the workof these bodies.

Anti-corruption requires more than the presence of an anti-corruption agency. Several UNCAC articles on preventive measures, criminalization, international cooperation and asset recovery clearly show that tackling corruption requires the support and participation of many institutions. Anti-corruption agencies need to be integrated into the broader national integrity system.51 Usually, a number of government institutions are assigned to perform specific functions that may be closely related to the function of the anti-corruption commission, and the effectiveness of the anti-corruption commission may depend on the proficiency of these institutions for the tasks assigned to them, so it is important to identify points of convergence between the tasks of the anti-corruption commission and other institutions and how these institutions can support the efforts of the anti-corruption commission, and how they can impede its performance.52 Among the institutions whose work can have an impact on the anti-corruption commission are the Office of the President, the Prime Minister, the Council of Ministers, parliamentary committees, the auditor general, internal audit units, the financial intelligence unit (the economic security service), the police, the public prosecution, the national institution for human rights (the Human Rights Commission), Hisbah and Ombudsman, the Public Service Commission and the Public Service Commission.53 One of the challenges that anti-corruption bodies may face is the overlapping of powers that may lead to competition between institutions and poor coordination. It is

51. UNDP, Practitioners' Guide: Capacity Assessment of Anti-Corruption Agencies, p28, (2011).
52. ibid
53. ibid

not unusual for multiple institutions - such as the police department, the public prosecution, and the anti-corruption authority, to conduct investigations, therefore the analysis of institutional relationships is very essential.54 The national integrity system should allow collaboration between institutions within an institutional framework consistent with the existence of effective coordination mechanisms, in some countries, anti-corruption bodies are newly established institutions and thus face in addition to institutional construction issues, challenges in introducing andpresenting themselves within the exisiting institutional landscape.55

Types and models of anti-corruption bodies

Looking at the anti-corruption bodies around the world and the different tasks assigned, they can be classified into three types, each of which forms a different model from the other according to the tasks assigned to each agency, without this classification leading us to define a specific model of them as the ideal model.56 Persons working to establish anti-corruption bodies should adopt the model most consistent with the specific national context in which the authority operates, taking into account the legal and administrative conditions and the existing institutions. Although good practices and effective practical practices can be identified in establishing anti-corruption bodies, it is difficult to assert the ability of a certain model to fight corruption in a more efficient manner than others due to the absence of conclusive evidence for this. In general, anti-corruption bodies can be divided to three types, each forming a model different

54. ibid
55. ibid
56. The Centre For the Integrity on The Difference Sector, Anti-Corruption Polices and Agencies, p 13 available at [sic]
Francisco Cardona, Anti-Corruption Polices and Agencies. [online] Cids.no. Available at: https://cids.no/wp-content/uploads/pdf/7250-DSS-Anti-corruption-GGG-3-skjerm.pdf [Accessed 1 May 2020].

from the other, according to the main tasks assigned to each body, these models are: multi-tasked anti-corruption bodies, anti-corruption bodies specialized in enforcing the law, and anti-corruption bodies concerned with the prevention corruption and the fight against it. These were tackeled by Francisco Cardona from whom they may be summarized, with some additions, as follows:57

1. Multi-tasking anti-corruption bodies

Under this model falls the anti-corruption agencies that have three main tasks of a. Investigation, b. prevention and control of corruption, andc. communication, education, and public awareness. It is noticeable in most of the bodies that follow this model that charging and prosecution remain a separate function that is not assigned to the agency, in order to achieve the independence of the investigation and to create some kind of checks and balances within the system.58 Multitasking anti-corruption bodies, due to their multi-tasking, should have broad powers and be independent from a legal and practical standpoint. We find that this model of anti-corruption bodies is spread across the continents of the world, and the most prominent examples are the bodies in Hong Kong, Singapore, Korea, New South Wales in Australia, Lithuania, Latvia, Poland, Botswana, Uganda, Argentina and Ecuador.

2. Law enforcement anti-corruption bodies

Fighting corruption through law enforcement can be done by detecting, investigating, or prosecuting corruption and charging those accused of corruption cases. Sometimes, anti-corruption bodies concerned with law enforcement may have functions related to the prevention of corruption, coordination and research.59 This

57. ibid
58. ibid
59. ibid

model could also be embodied in a body that combines the tasks of detecting and investigating corruption, and charging through a single law enforcement unit, and this is perhaps the most common model in OECD countries.60

3. Preventive anti-corruption bodies

The preventive approach to fighting corruption is the model on which many anti-corruption agencies have been built. It includes a group of institutions that can be classified into three groups:

a. Anti-corruption coordinating councils or committees. Such bodies are usually established to lead anti-corruption reform efforts to develop, implement and monitor a national anti-corruption strategy.61 These councils are composed of government agencies and ministries, representatives of the executive, legislative and judicial branches, and may include also the of civil society actors.62 Usually, these councils of anti-corruption are ad hoc institutions that are not permanent but working through regular meetings but fitted with a permanent secretariat, examples of agencies of this type are found in Georgia, Azerbaijan, Albania, Tajikistan, Ukraine, and Russia.63

b. Bodies for the prevention of corruption and protection against it. The establishment of these permanent institutions is to prevent and protect against corruption, and are entrusted with the coordination of strategies fighting corruption alongside other functions related to corruption risk assessment, integrity plans for institutions and public sectors, and awareness and education in the field of anti-corruption, and prevent conflicts

60. ibid
61. ibid
62. ibid
63. ibid

of interests, the statement of disclosure of assets, and the financing of political parties. There are examples of such institutions in Slovinia, Serbia, and Montenegro.64

c. Public institutions that contribute to the prevention of corruption but are not explicitly referred to as anti-corruption institutions. Some countries have established bodies dedicated to specific issues related to the prevention of corruption, such as preventing conflicts of interest, monitoring declarations of assets in public administration or parliaments. Such institutions exist in countries such as Romania, the Netherlands, the United States, and Lithuania, among others.

These are the various patterns that are usually followed in establishing anti-corruption bodies and defining their tasks. The Jakarta Principles stipulated that anti-corruption bodies must have a clear mandate to address corruption through prevention, education, awareness-raising, investigation and prosecution, either through one or several institutions that coordinate with each other.65

The process of appointing the leadership of anti-corruption bodies as one of the determinants of independence

The process of appointment and removal of the leadership of the bodies of the fight against corruption has a decisive influence on the agencies' independence in the exercise of their work. For non-biased investigations in the suspicions of corruption in the existing governments will not be possible unless the anti-corruption body is independent and protected from political interference, as the first factor, which can contribute to its independence is the choice of

64. Ibid, p15
65. Jakarta Statement on Principles for Anti-Corruption Agencies, (2012) available at: https://www.unodc.org/documents/corruption/WG-Prevention/Art_6_Preventive_anti-corruption_bodies/JAKARTA_STATEMENT_en.pdf

the leadership of the anti-corruption commission.66 In many cases, leadership is composed of a single individual, and in other cases the responsibility of the leadership of the body is shared between several persons.67 The leadership position of the authority can have different names, the most common of which is the president, the commissioner, or the general manager. The incumbent should enjoy technical capability and integrity to carry out the functions of the agency and is to serve as the face of the agency representing it before others and may severely affect the public's perception of the efficiency and integrity of the agency.68

Methods for appointing the leadership of anti-corruption bodies

The method of appointing the authority's leadership is related to the number of leaders appointed, and how the decision is made within the agency, and there is a fundamental difference between bodies that have one leadership and bodies with multiple leaders.69 The argument of the supporters of the idea of a single-person command is clear vision with respect to responsibilities and ease of accounting, which is clearly known who it falls upon. Supporters of the other option argue that the idea of the multiplicity of leaders makes them less affected by the pressure that can be exerted on them, and the multiplicity of leaders can provide opportunities for regional and qualitative representation, and can provide the organization with multiple and varied experiences.70 Besides, in societies that suffer from divisions, the decisions of bodies that are distinguished by the representation of all in them may have consideration and weight, so

66. The fish's head: Appointment and removal procedures for anti-corruption agency leadership, p2, (2015).
67. ibid
68. ibid
69. ibid, p8
70. ibid

it is important when determining whether it is necessary to have a single leadership or to have multiple leaders that the situation of the society is considered in terms of unity and division.71 On the other hand, one of the disadvantages of having a number of leaders at the head of the anti-corruption commission is that its system becomes more complex, which reduces the efficiency of the administrative body, especially if the tasks and responsibilities are not clearly defined. This may also result in delay in taking decisions or internal conflict sometimes.72

Modality of appointing the authority's leadership and its effect on its independence

Operations of the appointment of the leader(s) of anti-corruption bodies can be considered from several angles, when it comes to the relationship between recruitment and the independence that should be enjoyed by the body, the question that rises is "who has the ability to select and appoint?" For those who have the power to appoint a person in the presidency of the body can select supporters out of candidates for their own agenda.73 In an ideal world, this agenda would be to control corruption in a neutral manner. But those with the power to appoint might themselves be involved in corrupt practices, or they might try to use the anti-corruption agency to target their personal or political opponents.74 Practices in place indicate that the appointing authority may may lie with one of the powers of the three stateorgans: the executive, the legislative and the judicial, and in other cases appointments can be made by one of the authorities after consultation with the other organs, and participation in the consultations may extend to include civil society.75

71. ibid
72. ibid
73. ibid, p4
74. ibid
75. ibid

Appointments by one state branch

The leadership of the agency may be appointed by one branch only, and the most obvious example is the appointment by the President or Prime Minister of the leadership of the anti-corruption agency.76 Direct appointment by the head of the executive authority usually follows that the body is directly accountable to the same party that carried out the appointment process, and this is likely to lead to weakening the impartiality that should distinguish the body.77 However, the office of the investigation into the practices of corruption in Singapore, and the Independent Committee combatting corruption in Hong Kong are widely considered of the most efficient and effective among anti-corruption bodies. They both follow this method of appointment.78

At present, there is only a few anti-corruption bodies whose leadership is appointed directly by the president of the executive branch, in most of the recruitment of the leaders of anti-corruption bodies today require the approval of another person next to the President or Prime Minister, this is a formality or no more than being a celebratory procedure.79 For example, Malaysia, Swaziland, and Jordan require royal decrees to formalize the appointment.80 The majority of countries that use appointments by one branch require some consultation within the executive authority, such as consulting within the Council of Ministers, or consulting with some specific ministers. It can be said that the participation of many persons or bodies within the executive branch in the appointment process provides some checks and balances.81

In practice, stipulating the selection of the leadership of anti-corruption bodies based on advice, suggestion, or recommendation,

76. ibid
77. ibid
78. ibid
79. ibid, p7
80. ibid
81. ibid

or after consulting with any particular party, its interpretation may differ from one country to another, and thus have a different meaning.82 For example, in Pakistan, the leadership of the anti-corruption commission is appointed by the President after consulting with the chief justice, such a text does not clarify whether the chief justice can propose or reject a candidate, although there may not be a formal right of veto, these recommendation and consultation processes may allow for significant informal influence.83

In a group of anti-corruption bodies, the nomination is made by the President and then the appointment is made by the parliament, as in Ethiopia, Mongolia and Namibia, or the President makes the appointment, provided that the appointment is approved by the parliament, as is the case in South Sudan, Sierra Leone, Malawi and Zambia.84 It is assumed that this process includes the powers of parliament to veto the President's decision, as ratification or approval of the appointment is stronger than simple consultation. But it is not clear what happens if the legislature rejects the candidates.85 In Zambia, for example, it is the President who decides the ratification process, potentially leaving Parliament unable to veto.86 In legislative bodies in which the ruling parties have a majority, ratification or approval by parliament may be a mere formality rather than having a substantial effect related to creating a kind of checks and balances.87

Joint appointment by more than one branch of the state

What results from the process of appointing the leadership of the anti-corruption body by more than one state branch is different from the appointment made by one branch, with the joint designation

82. ibid
83. ibid
84. ibid
85. . ibid
86. ibid
87. ibid

allowing the branches of the State or committees of stakeholders to choose between the candidates or to propose candidates who they wish to see them at the helm of leadership of the agency rather than their role be merely limited to rejection or approval of one candidate.88 When more than one branch shares the effective authority to select candidates, selection can take place in several main ways :

a. That each of the branches involved in the selection process nominates its candidate or candidates separately at the same time.

An example of this first method is the Anti-Corruption Commission in Myanmar, which was established in 2013 as the selection process for the members of the Anti-Corruption Commission is based on a joint appointment method at the same time. The President and representatives of the legislative authority (Speaker of Parliament, Speaker of the Nationalities Council) nominate five members, then the President selects the Commission's leader and secretary from among the members.89 It is imperative to ratify all fifteen [sic] members by the two chambers, but they can not use the right of veto against the candidates unless because of the apparent lack of efficiency, the Committee is accountable to the President and its members can not be dismissed but only by the President.90

b. Each of the actors involved in the selection process is only to nominate their candidates while another branch makes the final selection and appointment, sequentially.

An example of this method is Kenya and Indonesia. In Kenya's Office of the Fight Against Corruption is composed of a president and two members. For their selection, the law requires that the President shall form a selection committee consisting of one representative

88. ibid, p8
89. ibid, p9
90. ibid

of each of the office of the President, the Prime Minister 's Office, the ministry responsible for ethics and integrity, the Commission of the Judicial Service, the commission responsible for human rights, the commission responsible for gender-related issues, the media council, the joint forum of religious organizations that includes representatives of several religions and sects in the country and the Association of Professional Societies in East Africa.91 The selection committee shall invite the persons qualified to submit applications for nomination and appointment to the position of president and members of the commission by advertising in no less than two daily newspapers.92 After receiving requests, the committee must examine the applicants' conformity to the conditions set by the constitution and the law and determine a list of those who are qualified and publish their names in at least two daily newspapers, then conduct public interviews with them, and then nominate three qualified candidates for the position of president of the commission, and four qualified candidates for the position of members and then refer those names to the President of the country.93 The President must, within fourteen days of receiving the names of the candidates, select the chairperson and members of the commission and send a list of the names of the selected persons to the National Assembly (Parliament) for approval.94 The National Assembly can accept or reject any name on the list, and if any name is rejected, another name will replace it by taking the same previous measures, and the selection committee is dissolved as soon as it finishes its mission.95

In Indonesia, members of the Anti-Corruption Commission are chosen by Parliament from a pool of candidates presented

91. Article 13, The Ethics and Anti-Corruption Commission Act No. 22 Of 2011
92. ibid
93. ibid
94. ibid
95. Article 13, The Ethics and Anti-Corruption Commission Act No. 22 Of 2011

by the President.96 The first selection process steps begins by the government's appointment of a selection committee which consists of members from the government and non-government [actors], the Committee announces the registration of candidates and the registration period continues for two weeks, and after the announcement of the names of candidates the selection committee must invite the public to get their views on the candidates. Comments may be sent to the Selection Committee within a month of its invitation.97 The selection committee determines the names of the candidates and presents them to the President, who must refer to parliament a list containing the names of the candidates, and it is required that the list contains twice the number of members of the Anti-Corruption Commission, so that Parliament can choose five names, one of whom is the head of the commission and four of his deputies.98 After choosing a list of candidates, parliament must present that list to the President for approval.99

In practice, formal rules are sometimes supplemented by informal rules. In Indonesia, for example, the law does not specify whether the President should accept the shortlist prepared by the selection committee.100 Nevertheless, it is understood that the President will need very convincing arguments to justify the rejection of any candidate proposed by the selection committee he has formed, and the President will need to explain these reasons publicly.101

96. Article 30, UU RI No. 30/2002 Commission for the Eradication of Criminal Acts of Corruption.
97. ibid
98. ibid
99. ibid
100. The fish's head: Appointment and removal procedures for anti-corruption agency leadership, p14, (2015).
101. ibid

c. The bodies participating in the selection process nominate their candidates in a collective manner, while another party makes the final selection and appointment, and that process takes place consecutively.

The Anti-Corruption Commission of Thailand consists of a president and eight other qualified members appointed by the King with the advice of the Senate.102 The selection and election of members are made after the president of the Senate forms the selection committee of fifteen members. The selection committee consists of the head of the Supreme Court, the head of the Constitutional Court, the heaad of the Supreme Administrative Court, seven deans of academic institutions elected by the institutions, and five of the representatives of the political parties who are chosen by election by the political parties that have membership in the council, so that each party is represented in the council by one representative, and then five out of their ranks are chosen by election.103 The selection committee is to prepare a list of eighteen persons eligible to be selected by the votes of no less than three quarters of Committee members and that list is presented to the President of the Senate after the approval of the persons nominated. The President of the Senate calls a session of the Senate for the purpose of passing a resolution by secret ballot to elect members of the agency from the list.104 Nominees who received the highest number of votes (votes of more than half of the members of the Senate) are elected as members, but if the number of candidates obtaining votes of more than half of the members of the Senate were less than nine candidates (the number of members of the Commission), it is imperative to submit a list of Names of the remaining nominees to the Senators to vote on

102. Section 7, Organic Act on Counter Corruption, B.E. 2542 (1999).
103. ibid
104. ibid

at their next session.105 Then the remaining members are elected based on the number of votes they receive. If there are nominees who get equal votes, which may lead to having more than nine members in the body, the President of the Senate draws lots to determine the nominees chosen.106 The persons elected as members of the Anti-Corruption Commission must meet and elect one of them to be the president of the commission. They notify the president of the Senate of the outcome of their selection, then the president of the Senate obtains the signature of the royal leadership to appoint the president and the members of the commission.107

Eligibility criteria to fill positions in anti-corruption agencies

Defining eligibility criteria reduces the scope out of which applicants can be selected to fill the leadership positions of the Anti-Corruption Commission, and the inclusion or exclusion of a specific group of candidates (such as non-governmental employees or holders of partisan positions) can have an impact on the actual or perceived impartiality and efficiency of the leader of the commission.108 Explicit criteria can narrow the selection and make it only fit to a circle of qualified candidates and make it difficult to choose the leadership on a political basis, and in addition to that clear criteria makes the process more transparent and enhances the possibility of examination and scrutiny.109 Eligibility criteria for heads of anti-corruption agencies vary greatly, but the most common criteria include age, nationality, residency, profession, education, political affiliation or public office,

105. ibid
106. ibid
107. ibid
108. The fish's head: Appointment and removal procedures for anti-corruption agency leadership, p18, (2015).
109. ibid

andyearsofexperience,andeachcountryaddsitsownrequirements.110 In some countries non-civil servants can not run for the presidency of the Commission, and in other cases, the opportunity of nomination is open to every citizen, which can result in the presence of large numbers of applications that require examination.111

The professional and academic backgrounds of members of anti-corruption bodies vary, and are not limited to the law as is the case in the selection of judges. Laws have traditionally accepted various academic and professional backgrounds as the presence of a number of professional and academic backgrounds can add value.112 In contrast, countries of such as India, Pakistan, Sri Lanka and Swaziland require in the candidates for membership of the anti-corruption bodies to have worked as supreme courts judges in the country, while other countries like Argentina, Mauritius, Moldova, Mongolia, and the Philippines require nominees to have served in the field of law for periods ranging from a minimum of six and fifteen years, while Sierra Leone requires chairpersons of at least ten years of experience in accounting, banking, financial services, or any other related profession.113

Some laws require the applicants for membership of the anti-corruption bodies to have certain professional backgrounds. In Thailand, the law requires that the applicant served as a minister, or a judge of the Constitutional Court, or commissioner of elections or the secretary of a grievances commission, or a member of the National Commission on Human Rights, or a member of the Audit Commission, or worked in the past in a position not less than the Deputy Attorney General, a Director General or equivalent, or a position not less than the position of a university professor.114

110. ibid
111. ibid
112. ibid
113. ibid
114. Section 9, Organic Act on Counter Corruption, B.E. 2542 (1999).

Citizenship and residency

Laws in some countries also specify citizenship and residency requirements and require that the candidate be a citizen. In Bhutan and Hong Kong, it is different, as it is required of the chair of the agency in Bhutan to have been born in the country, and must not be married to a foreigner. In Hong Kong, only residents Chinese citizens with constant residence in Hong Kong of not less than 15 years, and who do not have the right of the residing in any foreign country, are eligible to head the body115

Age

Thailand requires a candidate for membership in the commission to be forty-five.116 While in most countries the minimum age for leaders of anti-corruption bodies is set at forty years and there are countries such as Argentina that set it at thirty-five years, while in the Maldives, the minimum age is only twenty-five years.117

Affiliations and potential conflicts of interest

Some laws require qualified candidates to leave their jobs upon appointment to anti-corruption bodies, but in other cases, they may remain in their job positions, or they may have advisory positions for government agencies at the same time they assume their leadership positions in anti-corruption bodies, which raises the possibility of a conflict of interest.118

Working in party positions is prohibited for those applying to work in the leadership of anti-corruption bodies in the laws of a number of countries, and the failure to stipulate this in the laws of other countries

115. ibid
116. Section 9, Organic Act on Counter Corruption, B.E. 2542 (1999).
117. The fish's head: Appointment and removal procedures for anti-corruption agency leadership, p19, (2015).
118. ibid

does not necessarily mean that it is allowed.119 Countries such as Nepal and the Maldives do not allow the head of the association to retain party membership while in office, while Madagascar, whose laws do not provide for eligibility criteria, declares that the position of leadership of the body does not correspond to the occupancy of any position in a political party.120

The personality of the candidates to lead the body

A number of laws contain clauses regarding the personality of eligible candidates. Applicants are generally required to demonstrate high integrity, a good moral reputation, and the ability to carry out their work with integrity and independence.121 It is difficult to measure personality traits and behavior compared to measuring other standards such as age, professional experience, or affiliations. To make these items more than just words, you must allocate resources and efforts to obtain relevant information and evaluation of candidates.122 It is difficult to gauge the extent to which these requirements are implemented in practice.123 Many laws prohibit the candidacy of criminal record holders at least during a specified period of time. In Namibia, for example, political crimes committed before independence are excluded from this rule.124

119. ibid, p20
120. ibid
121. The fish's head: Appointment and removal procedures for anti-corruption agency leadership, p20, (2015).
122. ibid
123. ibid
124. ibid

Applying for the job versus being nominated

In most countries, the leaders of anti-corruption bodies are selected according to the established criteria, but in a few countries, such as Indonesia, the Maldives and Kenya, applying for the position of the authority's leadership is open to those who aspire to have competence, and any citizen who meets the requirements can run for election, and this method has the effect of generating confidence of the public is in the leadership of anti-corruption bodies.125

Anti-corruption and human rights agencies

The relationship between corruption and human rights include two major aspects; the possibility of the violation of human rights because of corruption, and the possibility of human rights violations because of the anti-corruption measures. Corruption may cause a direct violation of human rights, for example the use of bribery to [vengeantly] harm a person and detain him, as in the case of detentions that take place on weekends (victim detained late on Thursday to remain in detention until Sunday) and in other cases corruption may negatively affect the rights of people indirectly, as in the case of allowing the entry of toxic waste into the country. In general, the negative impact of corruption on human rights is very clear. If corruption exists in the education sector, the right to education can be affected. Likewise, if corruption is present in the judiciary, both the right to resort to the courts and the right to a fair trial may be violated, and if the prisoner is obliged to give the guard something in exchange for better cover or food, then the prisoner's basic right to humane conditions of detention will be affected, and so on".126 The impact of corruption on the principle of non-discrimination is something that cannot be ignored,

125. ibid, p20
126. Council of Human Rights, the Final Report of the Advisory Committee on the topic of the nNegative Impact on Enjoying Human Rights, 5 Para 17, January 2015.

as every corrupt transaction that leads to obtaining preferential treatment in obtaining a public service thus implies a violation or an impact on the principle of non-discrimination.127 This is on the one hand. On the other hand, with regard to the impact of anti-corruption policies on human rights, there are concerns expressed by human rights defenders regarding measures taken against individuals suspected of corruption in the context of investigation and prosecution that may violate human rights. Meeting the fears of human rights defenders are claims raisedby workers fighting against corruption, whose conclusion is that the principles of human rights hinder the effective enforcement of policies against corruption. Since the entry point to talking about human rights here is the work and tasks of anti-corruption bodies, it is important to address the need for anti-corruption bodies to work within the legal framework and in a manner that takes into account the human rights of the accused and suspects.

Respect for human rights and compliance with its standards enshrined in international treaties, the Bill of Rights in the Constitution and national laws must be an essential component of any investigation or trial. The basic rights that must be observed include a number of rights, including the right to life, the right to be safe from torture and other cruel, inhuman or degrading treatment or punishment, non-discrimination, freedom from arbitrary arrest or detention, the right to a fair trial, and respect for private and family life.128

Restriction of some rights

While some rights, such as the right to be free from torture, are absolute rights, and therefore cannot be restricted under any circumstances, others can be restricted in specific, precisely defined

127. ibid

128. Organization for Security and Co-operation in Europe, Handbook on Combating Corruption, p200, (2016)

circumstances. International human rights instruments and case law issued by national and regional courts define the conditions under which rights may be restricted.129 In general these conditions are:

a. **Legal** Any restriction of human rights must be stipulated in the law, so the government may not adopt or apply any measure that would restrict these rights in the absence of publicly existing legislation known to all, which is clear and precise enough to ensure individuals' prior knowledge and ability to foresee its applications.130

b. **Legality** No restriction of rights should be made unless it is to achieve legitimate goals related to a necessary legal purpose, including, for example, public order, public health, public morals, national security, public safety, and the rights and freedoms of others.131

c. **Necessity** Any restriction of rights must be reasonable, necessary to achieve the purpose for which it was legislated, appropriate to achieve it, and non-discriminatory, as the application of restrictive measures must not be subject to any discrimination on the basis of race, color, sex/gender, language, religion, political opinion or otherwise, or national or social origin, property, birth or any other characteristic.132

Special investigation methods and human rights

The special challenges involved in the investigation to prove corruption and the necessity of using special investigation methods such as wiretapping calls, eavesdropping on correspondence and information pertaining to the suspect, often put the authorities in a position to balance between the individual rights of the accused and

129. ibid
130. ibid
131. ibid
132. ibid

the interest of society in investigating and uncovering crimes. Here, the investigating parties have a special responsibility to ensure that they remain within the boundaries of what constitutes a transaction and behavior consistent with human rights.133 Since investigative methods of their special nature may lead to restrictions on some rights,
especially the right to privacy, their use must be subject to guarantees that they will not be misused, and that they are also subject
to control.134

The United Nations Convention against Corruption permits the use of special investigative methods to effectively combat corruption. Article 50.1 states that "In order to combat corruption effectively, each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived therefrom". The UN Convention against Corruption defines controlled delivery as "the technique of allowing illicit or suspect consignments to pass out of, through or into the territory of one or more States, with the knowledge and under the supervision of their competent authorities, with a view to the investigation of an offence and the identification of persons involved in the commission of the offence."135

The use of special investigation methods must be appropriate and in line with prevailing national laws that are supposed to comply with international human rights standards and that they are used only

133. ibid
134. ibid
135. The UN Anti-Corruption Convention, Article 1.i.

by the competent authorities.136 The United Nations Convention against Corruption expects state parties to identify these competent authorities, train them, and familiarize judges and prosecutors with oversight mechanisms.137 The criminal justice system must deal with any cases of improper use of special investigative techniques that amount to a criminal offense.138 Special investigative techniques must be used only in the case of serious crimes, commensurate with the matter under investigation, and less intrusive means should be preferred if they allow to achieve the same goal.139 Collecting investigative information related to a corruption investigation involves gathering personal information and data, which should be dealt with and protected in line with domestic and international law, including human rights laws.140

The investigation process in suspected corruption may involve surveillance of correspondence, phones, and computers of the accused and the suspects, which exposes the suspects and the accused to privacy violation, and exposes others who are in contact therewith but have no connection with the criminal activity of the same violation. The same applies to searches, and the use of evidence such as the testimony of an ambush, which may sometimes be tainted by the suspicion of encouraging the suspect to commit the criminal act instead of carrying it out by their own will.

The International Covenant on Civil and Political Rights stipulates the right to privacy, in Article17, which states:141

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

136. Organization for Security and Co-operation in Europe, Handbook on Combating Corruption, p201, (2016)
137. ibid
138. ibid
139. ibid
140. ibid
141. Article 17 of the International Convention on Civic & Political Rights

2. Everyone has the right to the protection of the law against such interference or attacks.

The general comment No16 issued by the Committee on Civil and Political rights, has clarified that this Article stipulates the right of every person to be protected from unlawful or arbitrary interference with their privacy, family affairs, home, or correspondence, or any unlawful campaign affecting their honor and reputation, whether by the state or any natural or legal persons.142 It requires states to take legislative and other measures that protect this right and prohibit its infringement.143 Unlawful interference means any interference that is not authorized by law, and the law itself is supposed to be consistent with the provisions and objectives of the International Covenant. As for arbitrary interference, it may include legally authorized interference if such interference is not in accordance with the provisions and objectives of the International Covenant or if it is unreasonable as to the circumstances in which it occurs.144 Since the protection of private life is necessarily a matter of relativity, General Comment No 16 clarified that "competent public authorities should not be able to request information related to the private life of an individual except as the knowledge of which is necessary in the interest of society as understood under the Covenant".145 In order to protect the right to privacy, the law should specify the party that may intervene, and the specific circumstances in which interference may be permitted. The law is to regulate the collection and preservation of personal information, and the states are to take measures to ensure that information related to a person's private life does not fall into the hands of people who the law does not authorize to obtain, equip, or use them.146 This information obtained must never be used for

142. Committee on Civic and Political Rights, General Comment No 16, Para 1.
143. ibid, p 2.
144. ibid, Paras 4 and 5.
145. ibid, Para 7.
146. Committee on Civic and Political Rights, General Comment No 16, Para 8.

purposes inconsistent with the Covenant. Article 17 also ensures the protection of personal honor and reputation, and it's the duty of States to provide adequate legislation for this purpose and to take measures as to enable any human being to protect themselves effectively against any unlawful attacks that relate to their honor and reputation, and to be provided with an effective means of redress against those responsible for such attack.147

The legal framework for combating corruption and criminalizing prohibited acts

The rules and procedures related to fighting corruption can be divided into three levels, each of which contributes differently from the other to reducing corruption. The first level deals with the rules aimed at establishing the foundations of the rule of law, consolidating democracy and the accountability it entails, protecting human rights, and creating an appropriate environment and general climate conducive to combating corruption. The second level concerns legal texts aimed at strengthening transparency and controls over public deals, financial control, and public office laws and regulations, and obligating the administration to explain its decisions. The third level includes the texts related to the criminalization and punishment of corrupt acts and dealings. Here, the texts of the Sudanese criminal law will be covered a little to see the compatibility of its provisions with the anti-corruption convention, with regard to the acts that the convention requires the state parties to criminalize.

Under the title of criminalization and law enforcement, the Anti-Corruption Convention required a number of acts and practices [be] prohibited by the Anti-Corruption Convention, including bribery in all its aspects and in the public and private sectors, embezzlement, trading in influence, money laundering, and a number of other

147. ibid, Para 11.

practices. The Convention obliges state parties to ban some of these practices while urging that others be prohibited. We will review here in detail the crimes for which the United Nations Convention against Corruption requires criminalization, as it stipulates that each state party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, the following acts when committed intentionally:

Article 15. Bribery of national public officials

(a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;

(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

The Convention of anti-corruption Incriminated criminalizes bribery in two cases: the case of presentation of an undue advantage or granting the same to public employees or promise them of the same. Thus, the person who offered it or the one who presented it to him would be in violation, and the second case is the case of its request or acceptance by the public official. This advantage may be in the interest of the person or another entity. This is for the purpose of the employee's doing or abstaining from doing a specific act.

The Penal Code of 1991 in Part X under the title of crimes relating to public servant and employee incriminates bribery, in article 88 thereof. It states that the following are deemed guilty of the crime of bribery:

a. A person who gives a public servant or employee of another person or an agent on his behalf, or offers them any reward of any kind to induce them to perform a service in which they have an interest, or inflict any harm to any other person in a way that breaches their job duties, or any gift or privilege in circumstances where that impact on b. the public servant, employee agent, is a likely outcome;
b. The public servant, employee, or agent who accepts or demands for themselves or for others a reward in the manner indicated in Paragraph a.;
c. Whoever seeks to give any reward as set forth in Paragraphs a and b, or accepts it or assists in that;
d. Whoever benefits from any reward, service or benefit knowing that this was obtained in any of the ways indicated in this Article.
e. Whoever commits the crime of bribery shall be punished with imprisonment for a term not exceeding two years, and may also be punished with a fine, and in all cases any money obtained as a result of the crime shall be confiscated.

We find that the criminal law prohibits bribery in the event it is provided to the employee, and if it is requested or accepted by the employee. It also incriminates the process of mediating bribery or benefitting of any reward or service knowing that it was provided because of bribery.

Article 16. Bribery of foreign public officials and officials of public international organizations

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a

foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.

2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

The Anti-Corruption Convention criminalizes bribery of foreign employees and employees of state institutions and obligates states parties to criminalize it. The preparatory work for the negotiation of an anti-corruption convention has indicated that this article is not intended to infringe on the immunities enjoyed by foreign public officials or employees of public international institutions in accordance with international law, but rather encourages public international institutions to waive those immunities in appropriate cases.148 It explains that the term "conducting international business" is intended to include the provision of international aid.149 It also made clear that it is important for any state party that has not criminalized this act, to the extent its laws allow, to provide assistance with regard to the investigation and prosecution of this crime by the state party that has committed it and that obstacles such as the absence of dual

148. The Report of the Committee for Negotiating on the Anti-Corruption Convention, on its 1st to 7th Sessions, Explanatory Notes on Official Documents (Preparatory Work), on the Negotiation Process on the Convention, p 7, 2003.
149. ibid

criminality do not prevent the exchange of information necessary to bring corrupt employees to justice.150

The Criminal Law of 1991 did not devote a separate text criminalizing the bribery of this category of employees specifically, but the phrases in the text of Article 88 such as "public employee, user or agent", may include employees in international institutions and foreign public officials.151 But it needs to be interpreted by the courts, it is more appropriate to explicitly state on the crime of bribery related to them, and hence there is need to modify this facet of Sudanese law.152

Article 17. Embezzlement, misappropriation or other diversion of property by a public official Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.

The preparatory work for the negotiation of the Convention against Corruption Shows that this article is not intended for obligation to prosecute petty crimes.153

The Sudanese law did not criminalize embezzlement under this name, but Article 177 of the Criminal Code criminalized breach of trust, as it stipulated that:

1. Whoever is entrusted with the possession or management of money and who ill-intends to deny that money, possess it, divert it to his benefit or the benefit of others, or squander it, or dispose of it with grave negligence that contravenes the

150. ibid

151. Abuzar el Ghafari Bashir, Anti-corruption in Sudan's Legislations in Light of the 2005 United Nations Convention against Corruption, in Arabic (unpublished).

152. [sic]

153. The Report of the Committee for Negotiating on the Anti-Corruption Convention, on its 1st to 7th Sessions, Explanatory Notes on Official Documents (Preparatory Work), on the Negotiation Process on the Convention, p 7, 2003.

requirements of trust, shall be deemed to have committed the crime of breach of trust, punishable by imprisonment for a term not exceeding seven years and may be punished with a fine.

2. If the perpetrator is a public servant, or employed by any person, entrusted with money in that capacity, he shall be punished with imprisonment for a term not exceeding fourteen years with a fine or by death.

Regarding the similarities and differences between embezzlement and breach of trust, Dr Jamal Fayez explains that the goal of the legislator in criminalizing the embezzlement of public money is to protect the funds of the public administration that exist between the hand of those who carry out the burdens of the public office because of their job, and that the crime of embezzlement is a form of breach of trust, but there are fundamental differences between them, as breach of trust does not require the presence of a specific characteristic in the perpetrator, while the crime of embezzlement requires that the perpetrator have a certain characteristic, which is to be a public official.154 Thus, it would be more appropriate to refer to embezzlement in its name, which calls for adding text to the criminal law in this regard.

Article 23. Laundering of proceeds of crime

Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate

154. "el Nassbe, Khiayanat el Amanah wal Ikhtilas, thalathah Jaraim Tadhur bil Salih el Aam", article in Arabic on el Bawabah News, at: https://www.albawabhnews.com/3539099

offence to evade the legal consequences of his or her action;

(ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;

(b) Subject to the basic concepts of its legal system:

(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;

(ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

The preparatory work for the Anti-Corruption Convention indicated that the money laundering acts criminalized in accordance with Article 23 are understood as independent and stand-alone crimes, and that there is no need for a previous conviction of the original offense to determine the unlawful nature or origin of the laundered assets.155 The preparatory work allowed for the illegal nature or origin of the assets to be determined during the course of the money laundering prosecution procedures.156

Money laundering crime in the Sudanese law

In Sudan, the issue of money laundering is governed by the Anti MoneyLaundering and Counter-Terrorist Financing Act for the year 2014 that incriminates money-laundering offense and deems guilty of this crime every person who knows or has reason to believe that any money obtained are proceeds of the predicate offense, who shall deliberately convert, transfer or replace it in order to hide its unlawful source or for the purpose of assisting any

155. The Report of the Committee for Negotiating on the Anti-Corruption Convention, on its 1st to 7th Sessions, Explanatory Notes on Official Documents (Preparatory Work), on the Negotiation Process on the Convention, p 7, 2003.

156. ibid, p 9, 2003.

person in committing the crime that resulted in these proceeds, or in escaping legal accountability.157 The criminalization also includes concealing or disguising the true nature of funds, their location, ownership, or ownership of rights related to them, as well as the acquisition, possession or use of funds.158 The same law stipulates that the punishment of the perpetrator on the predicate offense does not preclude punishing him for the crime of money laundering. To punish a person for the crime of money-laundering, it is not required to secure the conviction of the perpetrator of the predicate offense to prove that the money is the proceeds thereof.159

Article 25. Obstruction of justice

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences established in accordance with this Convention;

(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established in accordance with this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public official.

The Criminal law for the year 1991 provides, in article 99 thereof, that whoever obstructs a civil servant or attacks them them or use criminal force with them to prevent them from carrying out the duties of their

157. Article 35 of the Anti-Money Laundering and Counter Terrorism Financing Act for the year 2014.
158. ibid
159. ibid

job or because of carrying out such duties, he shall be punished by imprisonment for a term not exceeding six months or a fine or both.

Article 103 of the same stipulates that whoever addresses a public employee with a threat to harm him in order to induce that employee to perform an act related to his job or to refrain therefrom or delay it, shall be punished with imprisonment for a period not exceeding one year or with a fine or with both. The same law states a definition of a public servant in Article 3, as every person appointed by a public authority to carry out a public office, whether the appointment was with or without remuneration, on a temporary or permanent basis. Thus, articles of the criminal law criminalized obstruction of justice, as stated in Article 25 of the Anti-Corruption Convention without explicitly stipulating that.

There are other acts that the Convention urged to criminalize without requiring it, and these include the abuse of office, illicit enrichment, bribery in the private sector, embezzlement of property in the private sector, concealment of property derived from criminal acts.

References in Arabic

- Final report of the Advisory Committee of the Human Rights Council on the subject of negative effects of corruption on the enjoyment of human rights, January 2015;
- Abuzar el Ghafari Bashir, "Mukafahat el Fasad fil Tashreeat – el Sudan ala Dow Itifagiyat el Umam el Mutahidah Limukafahat el Fasad Lisanat 2005" [Anti-corruption Legislation - Sudan in the Light of the UN Anti-corruption Convention for the year 2005] (unpublished);
- "Report of the Ad Hoc Committee for the Negotiation of a Convention against Corruption on the work of its first to seventh sessions, Explanatory notes to official documents", 2003;
- John D Sullivan, "Corporate Ethics Compass - Anti-corruption Instruments, Values and Principles, Professional Ethics, and Corporate Governance;
- The Transparency, Integrity and Anti-Corruption Commission Law of 2016;
- Anti-Money Laundering and Counter-Terrorism Financing Law of 2014;
- Human Rights Council, Final Report of the Advisory Committee of the Human Rights Council on the subject of Negative Effects of Corruption on the Enjoyment of Human Rights, 5 Paragraph 17, January 2015.

Websites

- United Nations Office on Drugs and Crime website, United Nations Convention against Corruption, Status of Signature and Ratification, last visited 3 March 2020 available at https://www.unodc.org/unodc/en/corruption/ratification-status.html;
- Transparency International website, Corruption Perceptions Index, 2019, last visited 3 March, 2020, available at https://www.transparency.org/cpi2019;
- al Bawabah News website, at: https://www.albawabhnews.com/3539099.

References in English

- Adam Graycar, Corruption: Classification and analysis, p 89, (2015). Available at: file://hd.ad.syr.edu/01/568a51/Documents/Downloads/Graycar Corruption classification and analysis (1).pdf (last visited May 22, 2019).
- Ange Amundsen, Political corruption: An introduction to the issues (1999).
- Boris Begovic, Corruption: Concepts, types, causes and consequences, p4, (2005), https://www.cadal.org/documents/documento_26_english.pdf (last visited May 8, 2019).
- Daniel Treisman, The causes of corruption: a cross-national study, p 400, (2000).
- Eugen Dimant & Guglielmo Tosato, Causes and Effects of Corruption: What Has Past Decade's Empirical Research Taught Us? A Survey, Vol. 32, No. 2 JOURNAL OF ECONOMIC SURVEYS 335–356, p 8, (2018).
- Francisco Cardona, Anti-Corruption Polices and Agencies. [online] Cids.no. Available at: https://cids.no/wp-content/uploads/pdf/7250-DSS-Anti-corruption-GGG-3-skjerm.pdf [Accessed 1 May 2020].
- Gemma Aiolfi et al., Corruption a Glossary of International Standards in Criminal Law, (2008).
- https://pogar.org/arabic/governance/transparency-and-accountability.html
- Jakarta Statement on Principles for Anti-Corruption Agencies, (2012) available at: https://www.unodc.org/documents/corruption/WG-Prevention/Art_6_Preventive_anti-corruption_bodies/JAKARTA_STATEMENT_en.pdf
- Maurice O. Dassah, Theoretical analysis of state capture and its manifestation as a governance problem in South Africa, The Journal for Transdisciplinary Research in Southern Africa14(1),

a473, (2018).
- Nahitun Naher et al., Irregularities, informal practices, and the motivation of frontline healthcare providers in Bangladesh (2018).
- Organic Act on Counter Corruption, B.E. 2542 (1999).
- Organic Act on Counter Corruption, B.E. 2542 (1999).
- Organization for Security and Co-operation in Europe, Handbook on Combating Corruption, p200, (2016)
- The Centre for the Integrity on the Difference Sector, Anti-Corruption Polices and Agencies.
- The Ethics and Anti-Corruption Commission Act No. 22 Of 2011
- The fish's head: Appointment and removal procedures for anti-corruption agency leadership, (2015).
- Transparency International, the Anti-Corruption Plain Language Guide, (2009).
- UNDP, Practitioners' Guide: Capacity Assessment of Anti-Corruption Agencies, p28, (2011).
- UU RI No. 30/2002 Commission for the Eradication of Criminal Acts of Corruption.
- Vito Tanzi, Corruption Around The World: Causes, Consequences, Scope and Cures, p 8, (1998).