

Anti-Corruption Agencies: Between empowerment and irrelevance

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Luís de Sousa, PhD
CIES–ISCTE (Portugal), EUI (Italy)
E-mail: luis.sousa@iscte.pt
Internet: www.ancorage-net.org

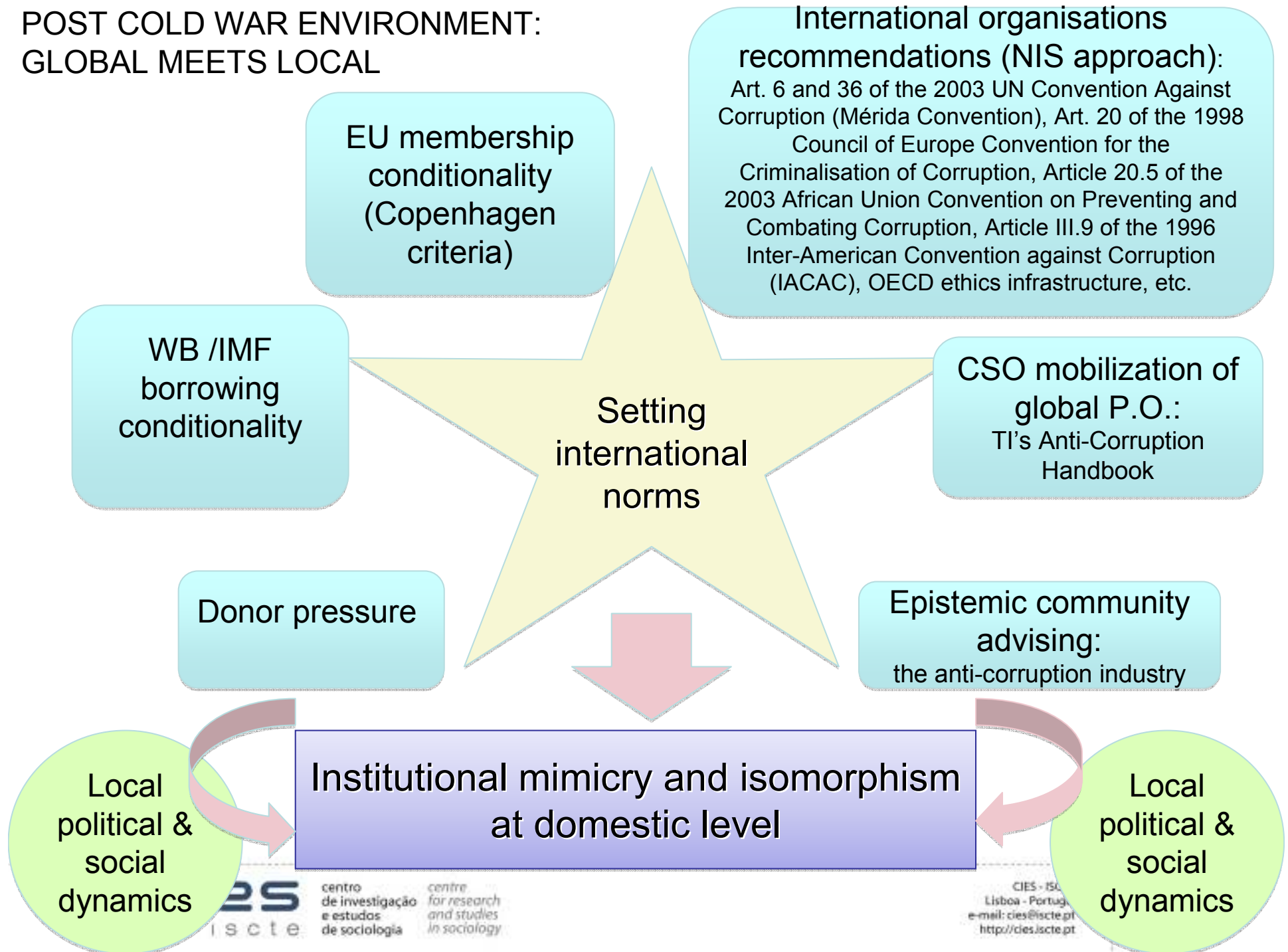
What is an anti-corruption agency (ACA)?

A public (funded) body of a durable nature, with a specific mission to fight corruption and reducing the opportunity structures propitious for its occurrence in society through preventive and/or repressive measures.

Institutional innovation of the 1990s: the explosion of anti-corruption agencies

- Past examples: parliamentary commissions, leagues, police special units;
- First anti-corruption agencies (ACAs) date from the aftermath of World War II and decolonisation: 1952, Singapore, *Corrupt Practices Investigation Bureau*; 1967, Malaysia, *Anti-Corruption Agency*; 1974, Hong Kong SAR, *Independent Commission Against Corruption*.
- ICAC of Hong Kong (1974) has been a model to the Anglo-Saxon world (Southeast Asia and Pacific) and to other administrative traditions and regions (e.g. Macau, Eastern Europe, Latin America).
- Post-Cold War context, two developments:
 - These agencies are no longer confined to the developing world, but are now regarded as acceptable solutions to developed countries too; corruption has become a global problem and so the institutional responses to address it.
 - Greater scope of action: today's ACAs are not only concerned with corruption in the public administration, but are equally concerned with political corruption and white collar crime.
- Corruption became the ultimate institutional response to corruption and a central piece in the national grand strategies. **How did ACAs become a norm?**

POST COLD WAR ENVIRONMENT: GLOBAL MEETS LOCAL



Sample of ACAs at ANCORAGE-NET

Country	Name of Agency	Acronym	Date of Creation
Argentina	Oficina Anticorrupción (Anticorruption Office)	OA	1999
Australia	Independent Commission Against Corruption	ICAC	1988
Croatia	Ured za suzbijanje korupcije i organiziranog kriminaliteta (The Office for the Prevention of Corruption and Organised Crime)	USKOK	2001
Czech Republic	Police of the Czech Republic, Unit Combating Corruption and Financial Crime, Criminal Police and Investigation Service	UCCFC	1991
Czech Republic (II)	Ministry of Interior of the Czech republic, Security Policies Department	OBP	1992
France	Service Central de Prevention de la Corruption	SCPC	1993
Latvia	Corruption Prevention and Combating Bureau	KNAB	2002
Lithuania	Lietuvos Respublikos specialiųjų tyrimų tarnyba (Special Investigation Service of the Republic of Lithuania)	STT	1997
Malta	Permanent Commission Against Corruption	PCAC	1988
Malawi	Anti-Corruption Bureau	ACB	1998 (Bill passed in 1995)
Moldova	Center for Combating Economic Crimes and Corruption	CCCEC	2002
Republic of Macedonia	State Commission for Prevention of Corruption	DKSK	2002
Republic of Montenegro	Uprava za antikorupcijsku inicijativu (Directorate for Anti-corruption Initiative)	DACI	2000 (changed name in 2004)
Romania	The National Anticorruption Directorate	NAD	2002
Slovak Republic	Úrad špeciálnej prokuratúry Generálnej prokuratúry Slovenskej republiky (Special Prosecution Office of the General Prosecution Office of the Slovak Republic)	ÚŠP GP SR	2004

What are the major reasons justifying their adoption?

- To respond to mounting public discontent
- To combat corruption in a **independent, innovative and knowledge-based manner** by:
 - **Developing a specialized repressive** (own inquiry/investigation teams);
 - **Developing a preventive capacity** (counseling, training, monitoring, etc); and
 - **Developing research capacity** about the phenomenon (risk assessments, harmonization of legal instruments, conducting surveys, etc).
- To overcome inadequacy of traditional institutional structures and processes;
- To be responsible for transforming policy into action:
 - **Leading role in implementing the national anti-corruption strategy**

Are ACAs worth? - Advantages

- It sends out the message that government authorities are concerned and dealing with corruption (symbolic gains for the incumbent);
- “Fresh start”;
- It enables the government to control the anti-corruption discourse;
- ACAs can enjoy greater autonomy than conventional anticorruption bodies;
- ACAs can enjoy greater credibility from public opinion than courts or police forces;
- Improved horizontal and vertical accountability;
- Greater clarity in evaluating failure and successes (it is everybody’s target);
- Greater efficacy due to:
 - More autonomy to start inquiries;
 - Higher level of specialization
 - Use of special powers;
 - Better allocation of resources

Are ACAs worth? - Disadvantages

- Expensive instrument (politically and financially):
 - the problem is not creating an ACA, but maintaining the same level of support and financing in the long term;
- Generates a series of inter-institutional resistances (rivalries, jealousies) which can result in institutional failure;
- Increases competition for budget allocation which can result in a series of window dressing operations;
- Autonomy is vulnerable due to statutory constrains, financial cuts and the fact that external evaluations expect more from the agency than what the agency is capable to deliver;
- ACAs are more at mercy of political decisions than conventional bodies.

How successful have they been in their intent to curb/prevent corruption?

- Difficult to measure success;
- Some agencies have seen their capabilities grow (e.g. Lithuania, Romania), a few have been abolished (e.g. Italy, Portugal, South Africa), others have remained shallow institutions and unknown to the public at large;
- Following a period of exacerbated positivism, delusion and scepticism amongst the anticorruption epistemic community:

2005 UNDP Report reads:

“Several countries have opted for or are currently considering creating an independent commission or agency charged with the overall responsibility of combating corruption. However, the creation of [such an institution is not a panacea to the scourge of corruption](#). There are actually very few examples of successful independent anti-corruption commissions/agencies. (UNDP 2005: 5)”

The National Assessment Survey on ACAs:

Exploratory Comparative Results

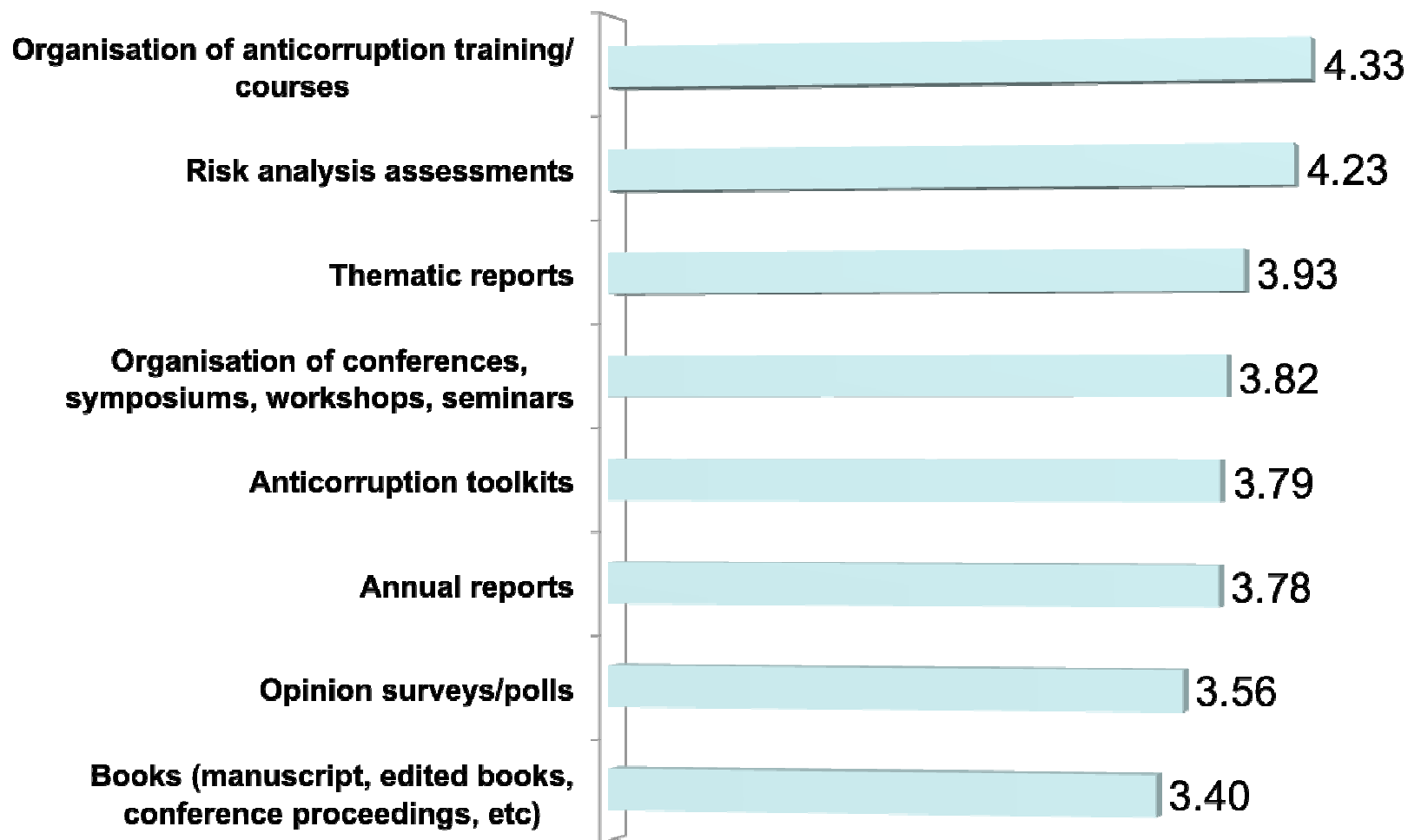
Evidence 1. There is a clear deficit in knowledge production that can be resourceful for the agency's investigation and preventive work.

What is their purpose?

Reasons justifying the creation of ACAs	Mean
To curb corruption in a knowledge-based manner	4,33
To transform policy into action	4,00
To curb corruption without political interference	3,95
To avoid the inertia of traditional enforcement mechanisms	3,60
To avoid investigations being stopped by corrupt members in traditional enforcement mechanisms	3,43
To get visible results fast	3,29
To retain control over the chain of command	2,22

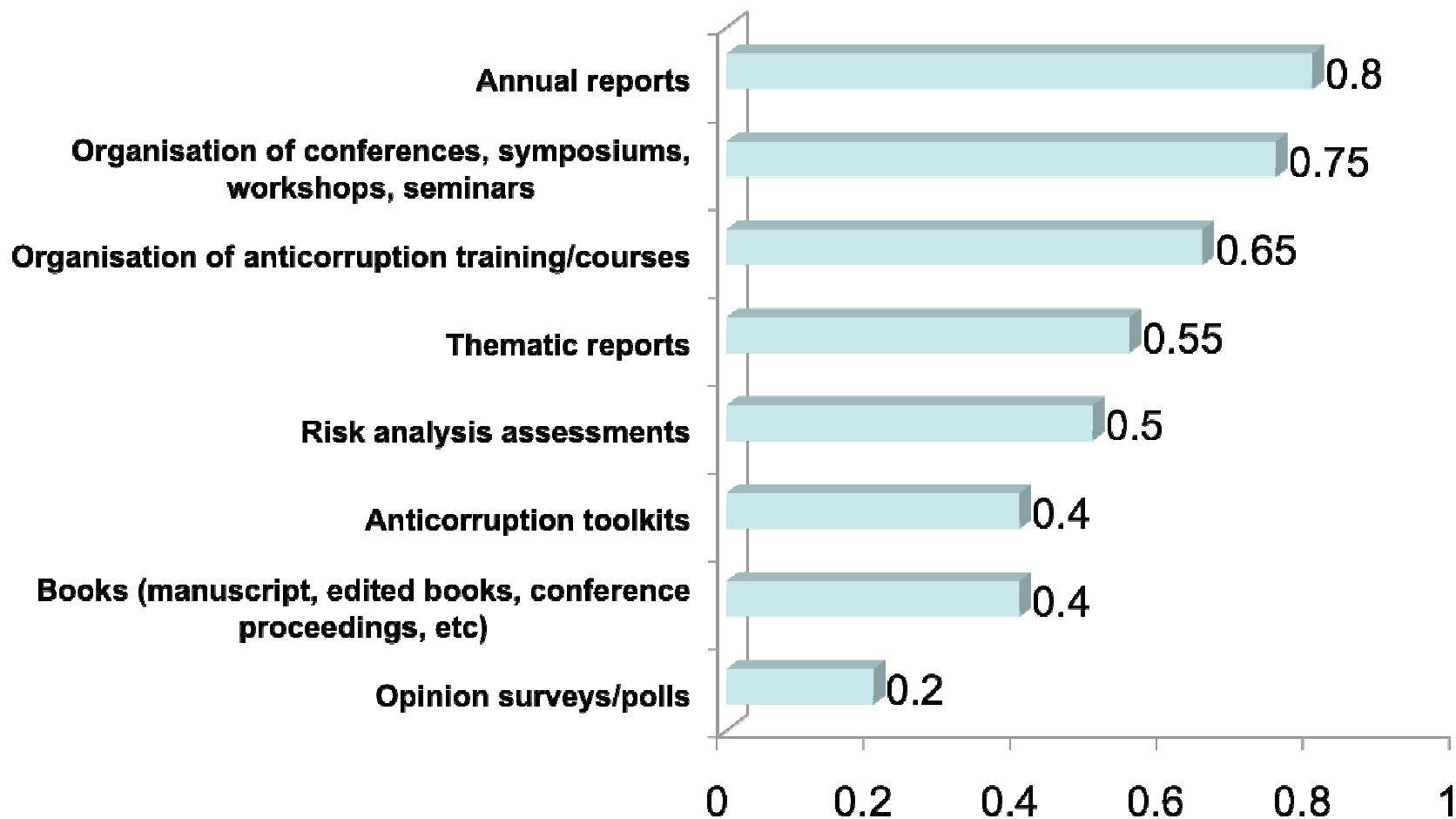
Scale: 5=extremely important; 4=very important; 3=important; 2=somewhat important; 1=unimportant.

Importance of corruption-related research products to ACAs



(5=extremely important; 4=very important; 3=important; 2=somewhat important; 1=unimportant; 0=don't know)

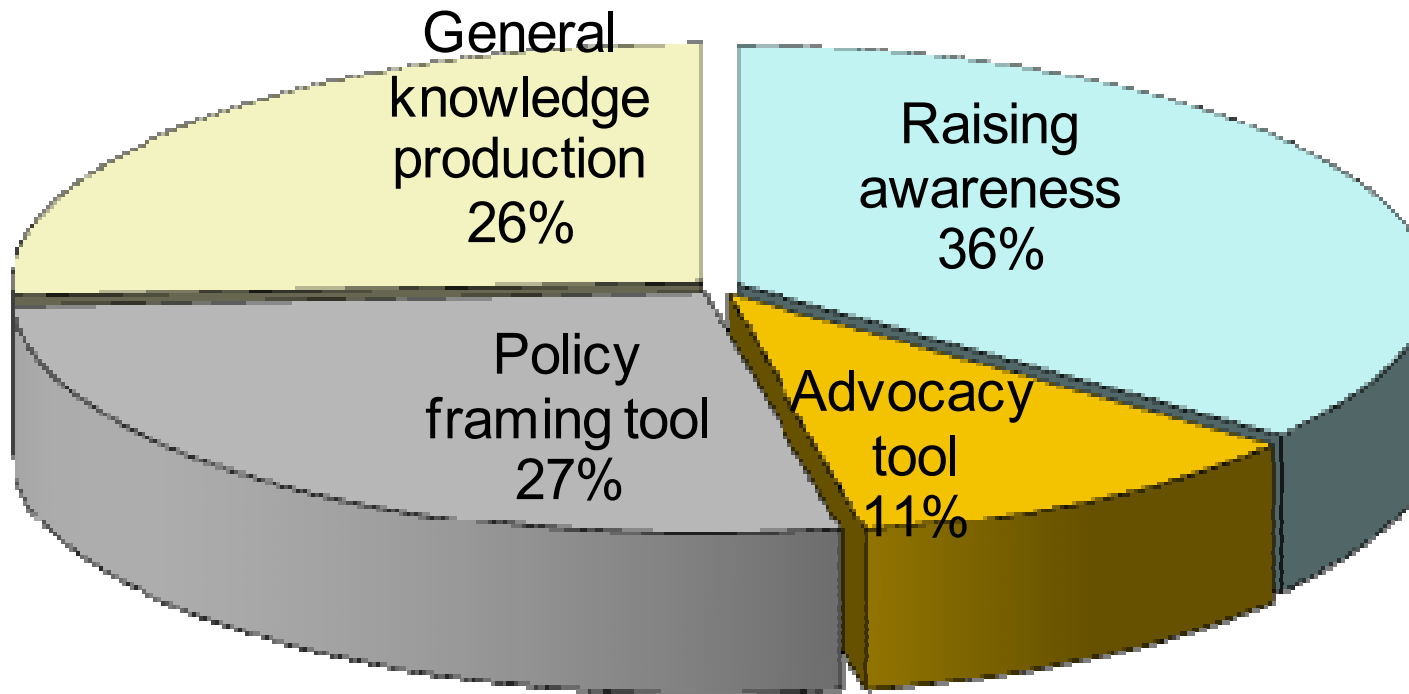
In-house production of corruption related research products



This indicator shows the proportion of ACAs that have opted for in-house production of the various corruption-related research products. The closer the indicator gets to 1 (total number of ACAs analysed) it means that the majority of ACAs have carried out these research products with its own internal capabilities.

Evidence 2. In what concerns their preventive work, ACA's are unimaginative and are repeating the work of anti-corruption NGOs.

Expected impact of corruption-related research products



Evidence 3. Reporting systems are not sufficiently diversified and tend to favour written complaints.

Procedures for reporting corruption

Country	Hotlines (phone/fax)	Downloadable complaints form at website	Online complains form	Complaints officer	Special P.O. Box for complaints	Others	Total complaint procedures
Argentina, Czech Republic, Lithuania	•	•	•	•	•		5
Australia (NSW), Brazil, Latvia, Kosovo	•	•	•	•			4
Belgium, Croatia			•				1
Czech Republic II	•	•		•	•	•	5
Italy	•			•			2
Malawi				•	•		2
Malta						•	1
Moldova	•	•		•	•		4
Republic of Macedonia				•	•		2
Republic of Montenegro	•			•			2
Romania	•		•	•			3
Slovak Republic	•						1
Singapore	•		•	•	•		4
Total	14 from 19	9 from 17	11 from 19	15 from 19	8 from 16	2 from 15	--

Evidence 4. Most ACAs tend to focus on administrative corruption. More complex cases, such as political corruption and white collar crime are often beyond their investigative capacity.

The agency's current top priority

Priority areas of intervention	Country
Corruption in the public administration	Argentina, Australia, Brazil, Czech Republic, Italy, Latvia, Lithuania, Kosovo, Malawi, Malta, Moldova, Republic of Macedonia, Republic of Montenegro, Romania
Corruption in national politics	Czech republic (II)
Corruption in local politics	France
Corruption in the police forces	Romania (AGD), Slovak Republic
Corruption in the judiciary	Croatia
Public procurements	Belgium
Corruption in the private sector	Singapore

Evidence 5. Some accountability and reporting requirements question the (perceived) degree of independence of ACAs.

Accountability requirements and degree of independence

Country	To whom or to which body does the agency report?	Is the agency audited?	In law, is the agency protected from political interference?	In practice, is the agency protected from political interference?	Who appoints the Head of the ACA?	How long does the tenure last?	In law, who has the power to remove the head of the ACA?	Is the head of the agency protected from removal without due justification?
Croatia	To the Attorney General's Office	yes	yes	yes	State Attorney General (heard the opinion of the Minister of Justice and the National State Attorney's Office Panel)	4 years	The State Attorney General	yes
Czech Republic (I)	To the Police Presidium and to the Upper State Prosecutor Office	yes	yes	yes	The Police President	No limit/undetermined	The Police President	no
Czech republic (II)	To the Government	yes	no	no	The First Deputy (section chief) of the Minister of Interior	No limit/undetermined	The State Attorney General	no
Lithuania	To the President and to the Parliament	yes	yes	yes	The President of the Republic with the consent of the Parliament	5 years	The president with the consent of the Parliament	yes
Republic of Macedonia	To the Parliament	yes	yes	yes	The members of the ACA	1 year	The members of the ACA	yes
Malta	To the Minister of Justice	no	yes	yes	The President (acting in accordance with the advice of the Prime Minister, given after he has consulted opposition)	5 years	The President acting in accordance with the advice of the Prime Minister	yes
Moldova	To the Government and to the Anticorruption Prosecutor Office	yes	yes	no	The Government	4 years	The Government	no
Republic of Montenegro	To the Ministry of Finance	yes	no	yes	The Government	4 years	The Government	yes

Evidence 6. Recruitment is not competitive. The majority of senior offices are politically appointed, but without a parliamentary audition of the short listed candidates. Most staff are transferred from other agencies. No screening and specialized training is carried out as a recruitment policy.

Type of professionals (full-time staff) and recruitment procedures

Country	Head office staff (including head, chairman or director)	Investigators/ operational staff	Administrative staff	Researchers (academics, risk analysts, etc)	Law experts and policy advisers	Internal auditors (including accountants)
Argentina	AP	AP/OC/TR	AP/OC/TR	AP/OC	AP/OC/TR	AP
Australia (NSW)	AP/OC	OC/TR	OC	OC	OC	OC/TR
Croatia	AP	AP	OC	--	OC	--
Czech Republic	OC/AP	OC/TR	TR	OC/TR	--	--
Czech Republic (II)	AP	--	OC	OC	OC	--
France	AP	OC	OC	OC	OC	OC
Latvia	OC (Director) AP (Deputy Dir.)	TR	OC	AP	OC	AP
Lithuania	OC	?	?	?	?	?
Malawi	AP (Director) OC (others)	OC	OC	OC	OC	OC
Malta	AP	--	AP	--	--	--
Moldova	AP	OC	AP	OC	--	OC
Republic of Macedonia	TR	--	TR	TR	TR	--
Republic of Montenegro	AP	--	OC	--	TR/OC	OC
Slovak Republic	AP	--	OC	--	--	--

Label: AP=appointed; OC=open competition; TC=following successful completion of training course; TR=transfer from other enforcement agencies.

Type of professionals (full-time staff) and recruitment mechanisms of the ACAs

	AP	OC	TC	TR	Total of ACAs that answered the question N = 21
Head office staff (including head, chairman or director)	16	6	0	1	of 20
Investigators/ operational staff	3	9	0	7	of 15
Administrative staff	4	12	0	6	of 18
Researchers (academics, risk analysts, etc)	3	8	0	3	of 11
Law experts and policy advisers	1	10	0	5	of 12
Internal auditors (including accountants)	2	7	0	2	of 11

Label: AP=appointed; OC=open competition; TC=following successful completion of training course; TR=transfer from other enforcement agencies

Evidence 7. Few ACAs have been provided with a balanced preventive and repressive capacity. Fewer display prosecution and discipline powers.

Comparative competences of ICACs

Detection/ Exposure	<i>Investigation</i>	Own initiative
		On complaints
		By request of a body
	<i>Articulation with other investigative units</i>	
	<i>Inquiry</i>	Own initiative
		On complaints
		By request of a body
	<i>Public hearings</i>	
	<i>Cooperation with other investigative units</i>	
	<i>Collection, centralisation and treatment of information</i>	
<i>Risk analysis</i>		
Prosecution/ Discipline	<i>Own judicial powers</i>	
	<i>Initiate judicial procedures</i>	
	<i>Refer to competent judicial authorities</i>	
	<i>Disciplinary powers</i>	
Prevention	<i>Propose organisational reforms</i>	
	<i>Propose managerial reforms</i>	
	<i>Propose legislative reforms</i>	
	<i>Advising/Guidance</i>	
	<i>Research, training and educational programs</i>	
	<i>Deterrent campaigns</i>	
	<i>Inform the public</i>	

Evidence 8. The (im)balance between levels of staffing and size of budget give an indication of the threshold of institutional relevance and of the degree of political commitment.

ACAs Staffing Levels and Budget

Country	Current Staffing Levels Total	Annual budget € ,m	“Does your agency have sufficient funding to carry out its mandate?”
Argentina	90	0,5	no
Australia (NSW)	111	10,16	yes
Croatia	36	1,2	yes
Czech Republic	306	4,4 (only wages)	no
Czech Republic (II)	--	--	yes
France	14 (when created)	0,37	yes
Latvia	89	3,2	yes
Lithuania	--	4,7	no
Malawi	51	0,52	no
Malta	4	0,08	no
Moldova	40	2,59	no
Republic of Macedonia	6	0,25	no
Republic of Montenegro	5	0,07	no
Romania	510	--	no
Slovak Republic	31	--	yes
Hong Kong	1.350	70,05[1]	n.a.

[1] Source: Kamanga 2005, p. 22.

WHAT HAS FAILED?

- **Inadequate policy advising** (mimetic package of reforms) + **unilateralism of decision-makers** (visibility gains and instrumentalization of new body):
 - Little care about format, location and management strategies of ACAs;
 - Unreasonable expectations: unbalanced relationship competences – resources (financial, human, knowledge);
 - Little care about financial autonomy, recruitment strategies and rules of report and accountability;
 - **Net result = duplication of efforts, mushrooming of shallow institutions => added burden to the tax payer (or donors)**
- **ACAs as “window dressing”**: most ACAs are small units with no investigative powers, even if their creation was justified as part of a tougher governmental reaction to corruption;
- **ACAs are expensive instruments**: Specialised recruitment and training; use of TICs; material conditions and attractive salary schemes make ACAs expensive instruments hence not attractive to governments running budgets deficits;
- **Uncertainty of returns**: the fight against corruption can cost a lot of money and produce little results.

WHAT NEEDS TO BE DONE?

- **Need to ensure same level of political & financial support in the long term;**
- **Capacitating the repressive dimension of ACAs:**
 - Need to consider for special powers adequate to investigate corruption and white collar crime;
 - Need to boost specialization without compartmentalization;
 - Need to improve cooperation and communication;
 - Need for burden sharing: joint investigative teams;
 - Need to go beyond passive repressive action: investigations based on complaints only; few ACAs base their investigations on research findings;
- **Capacitating the preventive dimension of ACAs:**
 - Need to boost knowledge production on corruption mechanisms;
 - Need to avoid repeating what anticorruption NGOs can do better (awareness raising);
 - Need to build an environment of trust (to circulate information) and cooperation (joint initiatives) with other enforcement bodies (**burden sharing**)
 - Need to develop a sound communication strategy
- **Assessing regularly performance and results obtained and make it available for public scrutiny**

Ten guiding principles on how to avoid the institutional failure of ACAs

Legislative level

P1: Think first, then act (on why & how creating an ACA)

P2: Reach pro-active forms of consensus (not immobilising ones)

P3: Avoid traps and gaps in the authority's statutes

Managerial levels

P4: Promote a leadership and a social composition with integrity and dedication

P5: Provide sustainable financial resources and define a strategy of resource management

Strategic level

P6: Create communication strategies and an IT-based complaints system

P7: Flexibility, adaptability and informality

P8: Build up strategic alliances

P9: Integrate the ACA into international cooperation networks

P10: Anchor ACA action in civil society

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