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DOES PERFORMANCE MATTER TO INSTITUTIONAL SURVIVAL?  
THE METHOD AND POLITICS OF PERFORMANCE MEASUREMENT  
FOR ANTI-CORRUPTION AGENCIES

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*Does performance matter to institutional survival?  
The method and politics of performance measurement for Anti-Corruption Agencies*

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## **Abstract**

Anti-corruption agencies (ACAs) are facing mounting pressure from national governments, public opinion, donors and international organizations to demonstrate objective results. Debates on the performance of ACAs tend to devote little attention to the causal structure of performance and often take place in a context in which the agency is absent or unprepared to refute allegations of inefficiency and institutional failure loosely formulated against its existence. The aim of this paper is to discuss issues of institutional failure by focusing on the politics and processes underlining performance evaluations of ACAs. Why is it important to evaluate the performance of institutions? How does performance relate to legitimacy and how have ACAs been performing along the three dimensions of legitimacy? What indicators have been developed by agencies and what do they measure? Finally, to what extent evaluation procedures are fundamental to the work and durability of ACAs?

## **Keywords**

Anti-Corruption Agencies, Corruption Control, Institutional Performance, Institutional Failure



## **Introduction**

Following a period of euphoria in which anti-corruption agencies (ACAs) were portrayed as the ultimate institutional response to corruption, the specialized bodies are now facing mounting pressure from national governments, public opinion, donors and international organizations to demonstrate objective results (OSCE 2004: 175-6; UNDP 2005: 5).

Most agencies created in recent years are facing uncertainty about their future. There are no guarantees of long-term sustainability either from a financial point of view or in terms of political support.

The decision to create or terminate an ACA is political and is not always an informed one. Considerations about performance and results are recurrent to any political debate on the agency's continuity. Whether decision-makers consider the agency ineffective or believe its mission has been sufficiently accomplished, this is done by vaguely referring to a set of figures presented as performance indicators, such as the volume of cases addressed. Little or no explanations are given to the conditions in which the body was set to operate. The causes for poor performance are commonly associated to poor training, poor resources, poor communication and inter-operability, poor leadership, poor legal/statutory framework and poor management practices, but this level of discussion on performance tends to be avoided at all costs by decision-makers.

Debates on the performance of ACAs tend to devote little attention to the causal structure of performance and often take place in a context in which the agency is absent or unprepared to refute allegations of inefficiency and institutional failure loosely formulated against its existence. Although ACAs are public bodies of entrusted authority and therefore are not expected to contest the ultimate will of the legitimate political power, they can nevertheless be prepared for such an eventual situation and make their case heard in the best way possible. In order to avoid discretionary or unfair political attacks, often motivated by a sense of fear and incapacity of control, ACAs must regularly assess and report on their performance to the public at large.

The aim of this paper is to discuss issues of institutional failure by focusing on the politics and processes underlining performance evaluations of ACAs. Why is it important to evaluate the performance of institutions? How does performance relate to legitimacy and how have ACAs been performing along the three dimensions of legitimacy? What indicators have been developed by agencies and what do they measure? Finally, to what extent evaluation procedures are fundamental to the work and durability of ACAs?

## **Why is it important to evaluate performance? – Performance and legitimacy**

Evaluating the performance of organizations has become a common feature of our democratic societies:

Talking about the purposes of organizations and evaluating comparative organizational success and failure in fulfilling those purposes are conspicuously parts of conventional discourse. Business firms are compared in terms of profits, sales, market share, productivity, debt ratios, and stock prices. Hospitals use cost recovery, mortality and morbidity rates, board certification of physicians, and occupancy rates. Universities use research productivity and prestige of faculties, test scores of students, rankings by popular magazines, and win/loss records of football teams. (March and Sutton 1997: 698)

ACAs are no exception to this trend. They are *public funded bodies of a durable nature with a specific mission to fight corruption and reduce opportunities for corruption by means of prevention and/or repression strategies*. They are bodies of entrusted authority with a mandate to fulfil and for that reason they are not only accountable, they are equally subject to evaluations on their performance, i.e. on the extent and manner in which their objectives are being accomplished.

Although it is clear that an under-performing agency is not fulfilling its purpose; it is not clear however, that such an organizational purpose, which comes under questioning, can be portrayed as unitary or whether multiple purposes are reliable consistent with the organizations' mission (March and Sutton 1997: 698). As March and Sutton (1997) put it: 'It is not clear that purpose antedates activities'. Regardless of whether there is such thing as a unitary and a priori definition of the agency's mission, organizations set and review their goals along the road. The institutionalization process is a steeping learning curve.

Having said this, ACAs are often expected more than they can reasonably deliver during their short existence. In some cases, these bodies have been set up as an attempt to upgrade the country's ethics infrastructure, or as a means to control the anticorruption discourse (Smilov 2008), or simply to fulfil obligations deriving from the signing of international anti-bribery conventions. In other cases, ACAs are set up under donor and international pressure in a context of state failure/building. Expecting ACAs to deliver when all governance structures are simply not there or under-performing is mission impossible (Doig 2009).

The need to measure performance results from an uneasy relationship between objectives and expectations in the lifetime of an institution. Although it is not consensual that performance evaluations of institutions are always a positive and desirable thing to do, they are nevertheless an unavoidable feature of modern societies. As Peter Larmour put it,

to subject institutions to performance assessment may be a first step towards de-institutionalising them. Discussions of the 'purpose' of the monarchy, or its costs may be the first steps to ending it (...) A willingness to subject inherited institutions to criticism is one of the restless features of modernity (2000: 144).

A public funded body whose mission is to uphold the highest ethical standards – integrity, legality, impartiality, transparency, accountability, fairness, etc – from other state institutions and beyond, could not be exempt of a similar scrutiny.

Evaluations of performance are commonly identified in the literature as necessary to ensure that the organizational responses adopted to counter certain challenges or phenomena are the most appropriate, economical and efficient; as a basis to make decision about the allocation of human and other resources; as a means to punish or reward leaderships and to stimulate productivity within its staff; and, finally, as an instrument to help writing the historical memory of an organization (March and Sutton 1997: 698).

Little attention has been paid to the importance of performance evaluations to the organization's legitimacy. The (in)capacity of an institution to act and pursue its goals is largely dependent on the levels of public support to its mission and activities. For example, without clear rules and guarantees with regard to the protection of human rights and civil liberties, citizens are likely to fear the agency more than embracing its mission. This would have direct repercussions on citizens' complaints, which in its turn would affect negatively the agency's investigative role.

The evaluation of organizational performance is carried out not only for managerial and productivity reasons, but also due to legitimacy concerns. These bodies are not just bound by Law they are equally accountable in vertical and horizontal terms. Citizens' backing of their activities is proved crucial to their work and 'survival'. Performance and legitimacy are intrinsically linked.

### **What indicators have been developed and what do they measure?**

Decision-makers and the public at large want to know whether ACAs are performing adequately and for that reasons they need to develop a set of indicators used to measure against. A more sophisticated definition is provided by the New South Wales Office of Public Management, according to which a performance indicator

defines the measurement of a piece of important and useful information about the performance of a program expressed as a percentage, index, rate or other comparison which is monitored at regular intervals and is compared to one or more criterion (Smith and New South Wales 1992: 76).

As mentioned above, one of the major reasons for decision-makers to measure the performance of agencies is to better assess the scope, efficacy and adequateness of their work and to make decisions about the (re)allocation of human and other resources. As the Chairman of the Parliamentary Joint Committee on the ICAC (NSW),<sup>1</sup> recently put it

Measurement of the Commission's performance is a key accountability requirement. While it is important that the Commission have ownership of the performance indicators that will be applied to it, it is also crucial that the indicators used, and the Commission's assessment of its performance against those indicators, be independently verified where possible, and involve benchmarking. (Hon John Hatzistergos 2008)

In order to make a comprehensive assessment of the agency's work, key performance indicators should be a combination of quantitative and qualitative information with significant value to inform political decisions. In other words, they should be presented as volume, for example, the number of cases investigated or the number of preventive tasks carried out by the agency as well as profiling information on the existing agency mechanisms and processes and their qualitative evolution. Performance indicators are valuable to decision-makers at three levels:

- Informative/diagnostic value (Is the agency performing adequately?);
- (Comparative) analytical/benchmarking value (Is the single multi-purpose ACA solution better than having investigative and preventive functions distributed among several enforcement and prosecution bodies? Is the agency underperforming compared to other foreign ACAs with similar competences and legal frameworks? What are the reasons for such disparity in the levels of performance?);
- Utilitarian/reformist value (How can resources be allocated more effectively? What institutional and statutory reforms are needed to boost the agency's investigative and preventive capacity? What strategies should be put in place vis-à-vis other actors in the ethics infrastructure?).

Other than having a directional function, indicating whether an organization is getting better or worse, they also fulfil an actionable function in the sense that they can offer sufficient qualitative and quantitative information to effect organizational change. Given their utilitarian/reformist value, prior to develop performance indicators it is essential to:

- Define the agency's mission, values and philosophy;
- Identify the stakeholders and their expectations;
- Agree on an initial set of objectives which specifically state what is to be achieved in relation to the identified expectations, whilst bearing in mind that institutions learn as they go along and that they may develop new purposes which are compatible with its mission;
- Draft a plan on how the agency should be pursuing these objectives and how resources should be allocated to fulfil its functions.

The search for 'the key' performance indicators is still in its infancy as an analytical and academic exercise, even for the most consolidated agencies. As the Parliamentary Joint Committee on the ICAC (NSW) came to conclude in a recent General Meeting with the ICAC (NSW) Commissioner, 'the Commission's Key Performance Indicators were unsatisfactory, and required reviewing and amending'. Although some scattered observations were made with regard to what was missing in

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<sup>1</sup> Under the *Independent Commission Against Corruption Act 1988*, the Parliamentary Committee's first identified function is 'to monitor and review the exercise of the Commission's functions'. 'Monitor and review' has been consistently interpreted by the Parliamentary Joint Committee on the ICAC (NSW) as examining: 1) policies and procedures in place at the Commission; 2) the Commission's use of its coercive powers and 3) performance measurement.

those performance measures<sup>2</sup>, little was said with regard to what should be taken into consideration to fully check how and to what extent the Commission's statutory objectives were being fulfilled. The Committee then further recommended that the ICAC (NSW) sought help from 'experts in the performance measurement field - such as the Audit Office' and 'that the Auditor-General, as an Officer of the Parliament, conduct a special performance audit of the ICAC, while the Committee proposed to engage a consultant to carry out an independent assessment and verification of the Commission's performance indicators and performance information on a regular basis'.

Performance indicators impact on the agency's credibility and levels of support at three levels: at the input, throughput and output levels (Scharpf 1999; Risse 2007). Traditionally, evaluations on performance have focused mainly on output levels. Today, evaluations tend to be more comprehensive and pay equal attention to input flows and the manner in which the agencies operate to achieve its stated objectives.

### ***Input performance indicators***

Input indicators have to do with the agency's capacity to collect and interpret information and its accessibility by citizens. Here we are concerned, for example, with the performance of complaint systems operated by anticorruption agencies.

Given the obscure nature of corruption, and the fact that some of its forms or consequences may be interpreted in a benevolent light in society (e.g. "noble corruption"), its detection and exposure is very difficult, not to say impossible, without citizens' involvement. Citizens interact daily with the public and political institutions in their daily lives and professional activities, and they are part of the transaction, either by their own initiative or by sheer pressure from office-holders. Complaints, no matter what their provenance – citizens, office holders, party officials, candidates, auditors, NGOs, etc. – are central to the pursuit of the agency's mission.

Most agencies rely on complaints to initiate inquiries or investigations, but not all have been successful in framing the procedures for reporting corruption effectively and safely ([Table 1](#)).

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<sup>2</sup> 'In many cases, the Commission's performance indicators were merely activity statistics, with no attempt to assess whether the activities were successful in furthering the Commission's statutory objectives. For example, a list of investigation reports published in the preceding year failed to indicate whether the reports have addressed the corruption and corruption opportunities identified, nor whether similar agencies have taken measures to implement recommended corruption prevention initiatives. Other performance measures focused on irrelevant matters. For instance, the ICAC measured the extent to which its services and products were sought in and beyond NSW. Moreover, activity statistics were provided as a means of measuring this inappropriate indicator.' (Hon John Hatzistergos 2008).

**Table 1. Procedures for reporting corruption**

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

Source: ANCORAGE-NET, National Assessment Survey on ACAs 2006/2008

The lack of diversified complaint procedures is not the only cause for low complaint rates. The lack of legal protection to complainers/whistleblowers in order to safeguard them from negative repercussion upon their lives and careers also hinders input performance. The need to safeguard the honour of those who are unjustly accused and the fact that complaints offer different degrees of reliability can serve as an excuse to limit the role of complaints by making it explicit to the denouncers that there are heavy costs associated with their action. Although most agencies believe they can guarantee the protection of those who come forward to help them, not all of them exempt denouncers from being prosecuted for perjury when allegations made are not corroborated. Some agencies will in fact report unfounded allegations to competent judicial authorities (Table 2).

**Table 2. How ACAs treat citizens' complaints**

Country	In practice, do citizens complain to the agency without fear of recrimination?	Will the agency report unfounded allegations to competent judicial authorities?
Argentina	yes	no
Australia (NSW)	yes	n/a
Croatia	yes	no
Czech Republic I	--	no
Czech Republic II	yes	yes
France	yes	yes (sometimes)
Latvia	no	yes
Lithuania	no	yes
Malawi	no	yes
Malta	yes	no
Republic of Macedonia	yes	no
Republic of Montenegro	yes	yes
Romania	yes	no
Slovak Republic	yes	yes

Source: ANCORAGE-NET, National Assessment Survey on ACAs.

Citizens' involvement in the agency's work can also be conditioned by treating the information selectively and prioritizing its sources. Complaints coming from office-holders inside the organization are often treated with greater reliability than anonymous complaints. The fact that ACAs select and prioritize the different types of complaint (anonymous versus disclosed, insider versus outsider, senior cadre versus low rank official, etc) is justifiable from an operational point of view (i.e. given that not all complaints are pursuable and resources are scarce), but it may affect negatively its input legitimacy.

Another input performance indicator is the numbers of complaints (reports) received from identifiable complainants. Analysts tend to advocate that if the volume of complaints tests the agency's accessibility and credibility, the number of identifiable complainants indicates its trustworthiness (De Speville, 1999; Camerer 2001). This correlation is not so clear-cut. One should not forget that citizens' attitudes towards the act of filing a complaint or their propensity to disclose their identity vary across countries on account of both historical and cultural factors. Not all ACAs have been sensitive to attitudinal specificities in framing their complaint systems to encourage citizens' involvement.

### ***Output performance indicators***

Results are crucial to any organization. They are the justification of its continuing existence. The results that the public expects from multi-purpose anti-corruption agencies (OECD 2007), i.e. those endowed with preventive as well as repressive capacity,<sup>3</sup> are the volume of investigation initiated and successfully concluded. By 'successful', it is meant the number of investigations that led to prosecution and eventually the conviction of wrongdoers. Conviction rates are the ultimate indicator against which success is commonly measured: without tangible successes in the short and medium term, ACAs are likely to run into trouble (Klitgaard 1997). This is a reductionist view of the work of ACAs, but hardly any analyst could deny the fact that hard responses to corruption are undoubtedly those who create more expectations. It is consensual that high investigative and conviction rates not only have a restraint effect in society, they also strengthen the agency's credibility thus encouraging the community to report corrupt practices whilst facilitating smooth execution of preventive activities (De Speville 1999).

The success of the Hong Kong ICAC and its promotion has an exportable 'model' is largely related to its policy of investigating and prosecuting 'big tigers' (Klitgaard 1988; UNDP 1997; De Speville 2000; Pope & Vogl 2000; Camerer 2001; Doig et al. 2005; Kamanga 2005). The number of investigations initiated, the number of pursuable cases (i.e. those that provide sufficient information to enable investigation the number of reports completed for government departments and public bodies, the number of cases and defendants sent to prosecution or to trial, the caseload per investigator, the average cost and time/labour devoted to each case, the average operational strength to population and budget ratio, the volume of the financial loss mentioned in the indictments, are some of the most common indicators used by ACAs to measure their output performance from a repressive point of view. In what concerns prevention, volume rather than impact tends to be the focus of most indicators used, such as, for example, the number of corruption prevention advices provided to private organisations, the outreach of education programmes/initiatives (measured in terms of enrolment figures) and the number of recommendations issues and adopted by stakeholders.

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<sup>3</sup> Examples of multi-purpose anti-corruption agencies are amongst others, the Singapore, Corrupt Practices Investigation Bureau (CPIB) (1952), the Hong Kong Independent Commission Against Corruption (HK ICAC) (1974), the Lithuanian Special Investigation Service (STT) (1997), the New South Wales (Australia) Independent Commission Against Corruption (NSW ICAC) (1998), the Argentinean Oficina Anticorrupción (OA) (1999), the Romanian National Anti-Corruption Directorate (DNA) (2002), and the more recent Kosovo Anti-Corruption Agency (KAA) (2006). For more information on other ACAs see: [www.ancorage-net.org](http://www.ancorage-net.org).

There are, however, some traps in using such linear performance indicators. What does an increment in “volume of cases” actually mean? Does it mean that the agency has improved its investigative capacity or that the ethics infrastructure is performing better (i.e. more effective inter-institutional cooperation and communication)? The volume of cases needs to be disaggregated into several other indicators. The agency may face an increase in the number of cases reported as a direct consequence of an increase in the number of corrupt occurrences or as a result of improved reporting mechanisms by making them more accessible and reliable to whistleblowers. But it may also be the case that the high figures relate only to petty corruption thus meaning that the agency’s investigative capacity is unable to deal with the more complex cases.

Other output indicators, such as the agencies’ time lag to act on complaints need to be taken into consideration. Not all are expedient in responding. In some cases, this has to do with the internal screening procedures. In other cases, it is simply lack of capacity to cope with mounting complaints or simply unwillingness to act on complaints.

### ***Throughput performance evaluations***

Carrying out visible operations can be quite rewarding to ACAs, but decision-makers and citizens are not only concerned on results achieved but on how these were obtained and through what processes. In principle, the means are not always justified, even if in practice, pressure to get visible and meaningful results fast can put aside considerations on the need to safeguarding the democratic freedoms and guarantees underpinning the State of Law. Stan Lee’s famous citation ‘With great power, comes great responsibility’ describes accurately the concerns about the (ab)use of special powers<sup>4</sup> allocated to some of these agencies. One of the legitimate fears is that such special prerogatives are abused for personal or political vendetta.

The independence of ACAs is a key issue for the assessment of their throughput performance. By independence it is not meant absence of reporting, external supervision or responsiveness to the principal’s policy objectives, but the agencies’ capacity to carry out its mission without political interference and manipulation. As bodies responsible for implementing national anti-corruption policies/strategies, ACAs are not completely “independent”. The concept is here understood as operational autonomy. In statutory terms, all ACAs are independent. In practice, their operational autonomy varies considerably from one agency to another. This can result from a number of factors. Some agencies display accountability and reporting arrangements that may put at risk their independence or at least question their perceived credibility (Table 3). The lack of transparent and competitive rules of appointment of head officials can result in undue political pressure by threat of removal. Undue political pressure can also result from unclear budget rules and procedures.

Transparency is another issue at stake and a difficult one to handle in evaluations given that it runs counter to other performance standards that render the operational work of the agency effective, such as, secrecy and discretion. Although some degree of discretion is needed for intelligence and for covert operations, the problem of transparency concerns also the internal governance of these bodies.

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<sup>4</sup> Some of the special investigative/coercive powers attributed to these agencies are, for example, the capacity: to obtain information, documents and other things from a public authority or official; to enter public premises; to require a public official to produce a statement of information or a document or other thing; to hold hearings in public and private, without the rules of evidence applying; to require a witness to answer any question, regardless of the possibility of self-incrimination; to issue a warrant for arrest of a person failing to answer a summons, or likely to fail to answer a summons; to obtain a warrant for a telecommunications intercept or listening device; to conduct a controlled operation; to use an assumed identity and to access tax records (Hon John Hatzistergos 2008). Not all multi-purpose anti-corruption agencies display such an ample selection of special powers. The accountability and reporting mechanisms for their use varies considerably across agencies. For more information on the competences/powers allocated to the various agencies, see the National Assessment Survey on ACAs: [www.ancorage-net.org](http://www.ancorage-net.org).

Some agencies do not publish their internal decisions and their internal auditing mechanisms and reporting rules are often vague or discretionary.

The absence of conflict of interest rules for staff members (prior, during and after leaving office), the lack of security screening in recruitment procedures, unclear career progression rules and poor salary and pension schemes can expose the agency to unnecessary risks. ACAs are not exempt from wrongdoing by their own members as recently demonstrated by the corruption scandal involving two employees of the Latvian anti-corruption agency (KNAB).<sup>5</sup>

Most of these problems, however, result from poor institutional design. As Alan Doig alerts us, the institutional format of ACAs is necessary to deliver the national anti-corruption strategy. The adequateness of the organizational design to the pursuable strategy shapes the agency's management's approach, decision-making and budget processes towards the anticipated delivery of or improvement in the organization's performance in delivering the strategy (2009: 66). In other words, format follows function and that in its turn determines the agency's capacity to deliver and imprints its performance record.

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<sup>5</sup> Charges of embezzlement (of around EUR 193,000) have been brought against Indra Veipa, head of the KNAB department tasked with ensuring confidentiality, and Janis Imsa, a chief specialist. The two KNAB members were accused of stealing the agency for several years. The case resulted in increased political pressure to remove the head of the agency, Mr Loskutovs, held responsible for lack of oversight. ('Pressure builds on Loskutovs' by Mike Collier, *The Baltic Times*, 11 June 2008. Available online: <http://www.baltictimes.com/news/articles/20637/> accessed on 17 November 2008; 'Saeima sacks Loskutovs, keeps 2 ministers' *Latvians Online*, 29 June 2008, Available online: <http://latviansonline.com/site/print/4376/> accessed on 17 November 2008).

**Table 3. Accountability requirements and degree of independence**

Type of agency	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 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
<b>Multi-purpose agencies with law enforcement powers and preventive functions</b>								
<b>Croatia USKOK</b>	To the Attorney General's Office	yes	yes	yes	State Attorney General (after consulting the Minister of Justice and the panel at the National State Attorney's Office)	4 years	The State Attorney General	yes
<b>Lithuania STT</b>	To the President and Parliament	yes	yes	yes	The President of the Republic with the consent of Parliament	5 years	The president with the consent of Parliament	yes
<b>Romania DNA</b>	To the Superior Council of the Magistracy and the Ministry of Justice	yes	yes	yes	The President of the Republic (on the advice of the Minister of Justice, with the approval of the Superior Council of the Magistracy)	3 years	The President of the Republic	yes
<b>Latvia KNAB</b>	To the Council of Ministers and Parliament	yes	yes	yes	Parliament, on the recommendation of the Council of Ministers	5 years	Parliament, on the recommendation of the Council of Ministers	yes
<b>Argentina OA</b>	To the Ministry of Justice	yes	no	no	The President of the Republic	No limit/ indeterminate	The President of the Republic	no
<b>Australia (NSW) ICAC</b>	To a Parliamentary Committee and to an inspector nominated by the NSW Governor	yes	yes	yes	The New South Wales State Governor	Up to a maximum of 5 years	The New South Wales Governor	yes
<b>Malawi ACB</b>	To the public, through Parliament	yes	yes	yes	The President, subject to confirmation by the Public Appointments Committee of Parliament	4 years	The President, with the confirmation of the Public Appointments Committee of Parliament	yes
<b>Specialized departments and/or units within prosecution and law enforcement agencies</b>								
<b>Moldova CCCEC</b>	To the Government and the Anticorruption Prosecutor's Office	yes	yes	no	The Government	4 years	The Government	no
<b>Czech Republic I UCCFC</b>	To the Police Presidium and the Upper State Prosecutor's Office	yes	yes	yes	The Police President	No limit/ indeterminate	The Police President	no
<b>Czech Republic II OBP</b>	To the Government	yes	no	no	The First Deputy (section chief) of the Minister of the Interior	No limit/ indeterminate	The State Attorney General	no
<b>Slovak Republic ÚŠP GP SR</b>	To the General Prosecutor and Parliament	yes	yes	yes	Parliament	5 years	Parliament	yes
<b>Preventive, policy development and co-ordination bodies</b>								
<b>Republic of Macedonia DKSK</b>	To Parliament	yes	yes	yes	The members of the ACA	1 year	The members of the ACA	yes
<b>Republic of Montenegro DACI</b>	To the Ministry of Finance	yes	no	yes	The Government	4 years	The Government	yes
<b>France SCPC</b>	To the Minister of Justice and the Prime Minister	yes	yes	yes	The President of the Republic	4 years	Irremovable	yes
<b>Malta PCAC</b>	To the Minister of Justice	no	yes	yes	The President (acting in accordance with the advice of the Prime Minister, after he has consulted the opposition)	5 years	The President, acting in accordance with the advice of the Prime Minister	yes

## **The politics of performance: is the record of performance important to determine the fate of an organization?**

Setting the appropriate performance indicators to an ACA is neither an easy task, nor an expendable and neutral decision.

There is a commonly held view that performance indicators are used to judge performance. Performance indicators often serve as the basis for decision-makers to reward (and punish) individuals or organizations. However, one should take into consideration that putting in place performance indicators is not a neutral process. Fudging the figures can be done in a variety of ways. Sometimes borderline or doubtful results are reclassified as successful outcomes. Performance indicators are numerical measures that require interpretation. They are an interpretative image of reality.

The record of performance is only indicative of the organization's institutional (in)capacity and durability. Market organizations are born, leave and grow in an organizational competitive environment. For public ones, things are a bit different. The nature of competition is not so obvious and openly disputed and the survival of organizations depend less on their record of performance than reformers might have wished. This is true for several State bodies, including anti-corruption agencies. Apart from rare exceptions where countries display more than one of these units,<sup>6</sup> most ACAs tend to be sole players, i.e. single domestic specialised bodies with no similar body with which to compete. However, this does not mean that their environment is not competitive. It is so in a different way. ACAs compete with the non-ACA model, which in practice means they compete with a series of resistances to their existence within the judicial system.

Unlike most organizations, their (competitive) survival is not always dependent on performance standards. ACAs come into being and perish through political decision. These are often justified in terms of efficacy (or the lack of it), but in very few cases has the decision to abolish an ACA been founded on concrete performance indicators. This was the case with the extinction of the Portuguese High Authority Against Corruption (AACC) by parliamentary vote in 1992, the Republic of South Africa government's decision to dissolve the Directorate of Special Operations (DSO), commonly known as the *Scorpions* and amalgamate it with the South African Police Service (SAPS) in June 2008, and the decision of the Italian Prime-Minister Berlusconi to abolish the Italian High Commissioner Against Corruption by Prime-Ministerial decree in 2008, soon after he came to power.<sup>7</sup>

### ***The extinction of the Portuguese High Authority Against Corruption***

The case of the extinction of the Portuguese High Authority Against Corruption (*Alta Autoridade Contra a Corrupção* (AACC)) is a clear example that the 'survival' of ACAs is not necessarily determined by objective performance evaluations, but by the degree of tension between the agency's work and the interests of the political class. Portugal is a paradigmatic case, in the sense that the AACC was perhaps the first Western European anti-corruption agency to be put in place (1983), and the first to be extinguished by a vote in parliament (1992) when other European countries were considering the creation of similar bodies to upgrade their ethics infrastructures (De Sousa 2001).

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<sup>6</sup> In the case of Bulgaria, Kosovo and the Czech Republic there are two such units.

<sup>7</sup> Following mounting pressure, externally, from international bodies and networks devoted to the fight against corruption, such as the Council of Europe, Group of States Against Corruption or the OECD, Anti-Bribery unit and internally, from the opposition and the public opinion at large, Mt Berlusconi reviewed his position and the High Commissioner has now been reissued and relocated. It displays a more limited range of powers and it is located under the supervision of the Ministry of Public Works. This decision does not come as surprising since public works are one of the sensitive areas that the High Commissioner is expected to inquire. At the time of writing of this article, there is not yet a decision on who will be appointed as High Commissioner.

The *Alta Autoridade Contra a Corrupção* (AACC) was created by government decree in 1983 with a clear mission to combat against public sector corruption. The government of the day (*Bloco Central*, a grand coalition between the two major parties) had strongly manifested its commitment to the prevention and repression of potential acts of corruption practiced in state services, in publicly funded institutions and public companies, with the aim of 'raising the public administration's performance to the levels of morality and transparency required to ensure the necessary confidence and respect of its citizens' (Decree-Law 369/83, *Preamble*, author's translation).

At first, the AACC had no investigative powers over sovereign entities (the president of the republic, the parliament, the government and the courts), a jurisdictional limitation which greatly impeded the scope and nature of its control. In its first years of existence, the AACC investigated several alleged cases of mismanagement and corruption in public companies, ministries, public credit and financial agencies, nationalized banks and local authorities, which were then communicated to the government to take appropriate action (AACC, Annual Report 1984–86: 137). However, no explicit link was established between these manifestations of corruption, caused by undue and extensive party patronage, and the financial needs and deeds of parties. The crude reality was that the AACC had been conceived as part of a political clean-up act aiming to minimize public discontent with party politics, without opening the Pandora's box on party corruption. Its action consisted of non-interference in party affairs. Consequently, the results of its investigations were limited and fell into oblivion.

In 1986, the AACC's statutory powers, composition and jurisdiction were reviewed (Law 45/86): the body was given special investigative powers over sovereign entities under parliamentary supervision. The agency initiated a series of investigations into the assets and bank accounts of politicians as well as various incursions into one of the areas of impropriety linked to party financial interests: party patronage in public companies. The agency's decision to engage in high-level anti-corruption investigations was not matched with a similar investment in its capacity to resist probable retaliatory attacks from the political class. The agency started to produce visible results and to threaten established interests.

Six years later, in 1992, all the major parties represented in parliament, with the exception of the Communists who abstained and a few MPs who voted against, decided to terminate the agency's work without an elucidatory debate on the results produced. There was overall consensus among the parties that the AACC was an inefficient and controversial instrument in the fight against corruption. In contrast to their rhetoric on the efficiency and purpose of the AACC stands the fact that the parties had only reported a mere 0.61 per cent of the total of 2963 cases opened during the period 1984-1992 (AACC, Final Report, 18 March 1993). The AACC had become expendable, because it had bothered too many people and too many interests. The results of its investigations - all documents and pending cases - were sent to the National Archives and public consultation was forbidden for a period of 20 years.<sup>8</sup>

### ***The dissolution of the South African Scorpions***

The Directorate of Special Operations (DSO), commonly known as the Scorpions, was established in terms of section 7(1) of the National Prosecuting Authority Act 32 of 1998 (NPA Act), and came into existence in 2001. Its mission was to deal with national priority crimes and to supplement the efforts of existing law enforcement agencies in tackling serious crime, including corruption and similar offences. The DSO was located within the National Prosecuting Authority (NPA) and, as a specialist

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<sup>8</sup> At present, the anti-corruption units in operation are: the DCICCEF - *Direcção Central de Investigação da Corrupção e Criminalidade Económica e Financeira*, a special branch of the Criminal Police entrusted with investigating corruption and economic and financial crime; and the DCIAP - *Departamento Central de Investigação e Acção Penal* of the Attorney-General's Office responsible for the centralization and treatment of corruption related information and for coordinating anti-corruption investigations.

unit, was vested with special investigative powers, including the power to gather, keep and analyze information, and the power to institute criminal proceedings, where appropriate.

Since its creation in 2001, the Scorpions have undertaken a number of high-profile investigations, some of which involving prominent figures of the African National Congress (ANC). Against a background of successful operations, the Scorpions started to meet some political resistance and concern about its special investigative methods. Four years later, on 1 April 2005, the President of Republic, appointed Judge Sisi Khampepe to chair a commission of inquiry (Khampepe Commission) 'to inquire into the mandate and location of the Directorate of Special Operations (DSO) and other matters pertaining to the functioning of this institution' (*Statement on the report of the Khampepe Commission of Inquiry*, 29 June 2006)<sup>9</sup>.

The conclusions of the Khampepe Commission were overall positive and supportive of the method and work developed by the Scorpions against complex and organized crime. The Commission found, however, a series of issues in which the DSO was not performing properly or meeting satisfactorily the expectations:

- The commission identified the weakness of coordinating systems between the relevant institutions as a major challenge;
- The commission found that the Minister of Justice and Constitutional Development did not have practical and effective oversight responsibility in respect of the law enforcement functions of the DSO.
- The report draws attention to the fact that several officers of the DSO and external service providers have not been subjected to security screening as is required in law.
- The commission expressed concern with regard to the manner in which the DSO publicized the subject matter some of its investigations. According to the commission conduct of this nature could result in the violation of the rights and freedoms protected under the Bill of Rights.

Notwithstanding these findings, the Khampepe Report, published on 5 May 2008, recommended that the DSO should be retained within the NPA.

In the meantime, the ANC was pushing for a tighter political control of the DSO by moving the unit from the jurisdiction of the NPA to the SAPS. A draft resolution in that direction was prepared at the ANC's national policy conference in June 2007. Six months later, in December 2007, the ANC adopted a resolution calling for a single police service and the dissolution of the DSO at its 52<sup>nd</sup> National Conference held in Polokwane (Polokwane Resolution).

The government's decision to scrap the Scorpions was criticized by sectors of the public opinion as an attempt at diluting corruption and fraud cases against high profile public figures and led a prominent businessman from Johannesburg, Mr. Hugh Glenister to contest the decision in the Constitutional Court.<sup>10</sup>

This legal process initiated on 21 January 2008 would conclude with the Constitutional Court's decision<sup>11</sup> to validate the position of the Minister of Safety and Security and the Parliament's final resolution to dissolve the Directorate of Special Operations (DSO), known as the *Scorpions* and amalgamate it with the South African Police Service (SAPS) in June 2008.

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<sup>9</sup> *Statement on the report of the Khampepe Commission of Inquiry*, 29 June 2006. Available online: <http://www.info.gov.za/speeches/2006/06062915451001.htm>, accessed on 17 November 2007.

<sup>10</sup> 'EXCLUSIVE: Hugh Glenister talks to News24', *News24*, □ 20 August 2008. Available online: [http://www.news24.com/News24/QA/0,,2-2377\\_2378844,00.html](http://www.news24.com/News24/QA/0,,2-2377_2378844,00.html), accessed on 17 November 2008.

<sup>11</sup> Constitutional Court of South Africa, *Glenister v President of the Republic of South Africa and Others* (CCT 41/08) [2008] ZACC 19 (22 October 2008) (Available online: <http://www.constitutionalcourt.org.za/site/glenister.htm>, accessed 17 November 2008).

### ***The removal of the head official of the Latvian's anti-corruption agency***

Following the unsettling revelations that two senior staff from the Latvian anti-corruption agency (KNAB) had defrauded the agency for several years, the then Prime Minister Aigars Kalvitis demanded the resignation of the head of the agency, Mr. Loskutovs, held responsible for lack of oversight.

Against a background of various allegations of impropriety by the ruling party, Latvians came out to the streets to protest against the government's push to establish tighter control on the anti-corruption agency and demanding early elections, an episode which became known as "the umbrella revolution". Latvians transformed Mr. Loskutovs into a symbol of public discontent over what they interpreted as a political attack by the government majority in response to the agency's earlier decision to demand the ruling People's Party to return 1 million lats (approximately EUR 1,500,000) to the state coffers over violation of the campaign finance laws leading up to the 2006 parliamentary elections. Faced with intense public pressure the former Prime Minister Aigars Kalvitis was forced to resign.

On June 18 the new centre-right government led by Prime Minister Ivars Godmanis asked the parliament to fire Loskutovs for embezzlement in the Corruption Prevention and Combating Bureau (KNAB). A peculiar multi-party inquiry commission headed by Prosecutor General Janis Maizitis was set up to handle this case. The commission was composed by a number of individualities: the head of the Constitution Protection Bureau (SAB), the Security Police head, the chairman of the parliamentary national security committee and the Defense Minister. Although no direct charges of embezzlement were brought against Mr. Loskutovs, eleven days later, on June 29, the Latvian parliament fired the head of KNAB with a majority vote of 52-40.

The political decisions to terminate the AACC), to dissolve the Scorpions, or to remove the head official of KNAB are the direct result of the agencies' resolution to invest on cases of political corruption at a very young stage of institutionalization. Young ACAs are as much enthusiastic as they are immature. Since they have to work (and consolidate their work) under a lot of domestic and foreign pressure this often culminates in making daring (yet inadequate) strategic decisions, evidence of the lack of planning and above all of the mismatch between objectives and institutional strength to deliver. The *Icarus paradox*, as Doig called it (2009: 79), that is, the temptation to focus on 'high-level anti-corruption investigations without attention to an appropriate management framework and the presence of a robust institutional capacity' not only may lead to frustratingly low results, it can also raise a level of tension with the political class disproportional to the agency's capacity to defend itself against retaliatory attacks.

If performance evaluations are secondary to the political willingness to terminate an ACA, they are equally irrelevant to the government's decision to disinvest in its operation. The same way the decision to set up an ACA carries with it considerable symbolic gains to the executive, dismantling such an agency in a context where public opinion is highly mobilised to the problem of corruption can prove quite negative to the executive's image and anti-corruption discourse. If the decision is ground on a broad political consensus amongst the major parties represented in parliament, the impact can be less harming, but even then risks are still high. In order to avoid unnecessary bad publicity, governments can opt for overloading agencies with new competencies that will reduce its operational capacity and resume its activities to intense deskwork. This is the case with the Kosovo anti-corruption agency (KAA), which is now required to review nearly 800 asset declarations with a total staff of 15. This exercise has little proven utility to investigation and compromises the agency's human resources. Another governmental strategy to reduce/control the agency's capacity to deliver is to keep resources tight and force the agency to survive on little political and financial support. The resilience of failed bureaucratic bodies is a proven fact. They have the capacity to endure, consuming resources without necessarily producing results or fulfilling their mandate.

### **Some concluding remarks**

Choosing the adequate performance indicators and putting in place regular evaluation procedures to examine how the ACA's statutory functions are being addressed is neither an easy task, nor an expendable and neutral decision.

Reporting on results accrues to the organization's positive image and public support, in the sense that citizens are more secure that they are dealing with an accountable body; but reporting meagre results may also generate public discontent and cynicism vis-à-vis the agency's work and *raison d'être*.

Not assessing performance and not reporting is not a reasonable option either, since it leaves room for all kinds of speculations and abuses of the word "efficacy" as well as it shoves the organization to the corner of failed and shallow bodies that are incapable of raising public interest and support for their activities. Talking good or bad an agency's work is a better sign than not talking at all. The public's ignorance about the existence and performance of an ACA lays the conditions for its shadowing or death. When bodies of this nature die, the likelihood of getting another version is meagre and it will most likely be haunted by the previous failed attempt. For this reason, decision-makers avoid to be known as the executioner and are much happier to settle for a gradual shadowing of the agency's work. As Douglass C. North (1990) explained, some groups may be more interested in maintaining failed or inefficient institutions than in terminating or reforming them.

ACAs are attracting attention to them but not necessarily for the best of reasons. The lack of visible results is making the option of terminating their work tilting in the back of the minds of decision-makers, donors and international organizations. In order to be prepared to make their case heard in what is increasingly a hostile and disillusioned environment, ACAs must take evaluation procedures seriously and devote some time to develop performance indicators and to learn how to communicate them. Having said so, 'good' performance is not necessarily important to determine their fate. They are created and terminated by political decision and not always an informed one.

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