Ethics for the Prevention of Corruption in Turkey (TYEC)

CORRUPTION REPORT: FINDINGS, ANALYSIS and RECOMMENDATIONS

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The views expressed in this report are those of the author's own and do not necessarly reflect official positions of the European Union and the Council of Europe

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Turkey has always given priority to the fight against corruption. Turkey is strongly committed to the fight against corruption and has taken all legislative and operational measures in order to stamp out domestic corruption and to contribute to the international efforts to tackle the problem, as it has increasingly assumed a transnational character.

[Source: Turkish Ministry of Foreign Affairs, 2008]

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1. EXECUTIVE SUMMARY and RECOMMENDATIONS

- Corruption is generally seen as a pervasive and continuing problem.

- Although there have been a number of anti-corruption initiatives, internal and external reviews note slow progress.

- The areas of concern are generally agreed but the proposals for reform vary.

- A number of reforms note the need for ownership and leadership for future anti-corruption strategies.

- A number of the reforms focus less on new or more institutions or laws, than on more effective and coordinated work between existing agencies, and reform to current legislative or other procedures, to remove inhibitors to progress and encourage the facilitators for progress. Here a number of existing agencies will be required to take on key roles. This report focuses on this approach.

- Both the Systems Study and the various Research Studies note these issues and also focus on the need to a general awareness and inculcation of ethical standards.

- Together these issues are addressed through a sector approach that also proposes means for the better management, coordination and monitoring of the proposed anti-corruption strategy. Two lead agencies are identified for ownership and leadership for these roles.

2. INTRODUCTION

This report is a component of the Prevention of Corruption project funded by the EU and delivered by the Council of Europe.

It addresses the revised Output 8 (combining the original Outputs 8 and 9) as stated in Table 1.

Table 1: Outputs		
Output 8:	The effectiveness of codes of conduct and other anti-corruption measures in Turkey will have been evaluated and recommendations for future prevention strategies are available and Coordination of measures to promote ethics with other anti-corruption measures in Turkey ensured.	▪ First study available by month 12 ▪ Further studies available by month 22 ▪ Quality of studies/ recommendations ▪ Project reports ▪ The results of the research studies will be followed up and feed into improved corruption prevention strategies ▪ Availability of proposals for improved coordination ▪ Project reports ▪ GRECO reports ▪ EU/EC reports
Activity 8.1	Carry out system studies evaluating the effectiveness of anti-corruption measures implemented in recent years, including criminal law measures, the public information act, the Code of Ethics	System Study No. 1: Effectiveness of AC measures through Code of Ethics System Study No. 2: Effectiveness of AC measures through the public Information Act System Study No. 3: Effectiveness of AC measures in Criminal Law System Study No. 4: Effectiveness of AC measures through disciplinary provisions in the legislation and existing structures
Activity 8.2	Submission of Proposals on specific Anti-corruption measures based on the Study Outcomes	Report on specific Anti-corruption measures based on the Study Outcomes
Activity 8.3	Develop proposals for improved management, coordination and monitoring of anti-corruption strategies in Turkey	Submit proposals/recommendations on: ▪ Management; ▪ Coordination; ▪ Monitoring Tools of Anti-corruption Strategies in Turkey

The report[*] is based on:

- the Research Studies (Output 6);
- the System Studies report (Activity 8.1), and;
- the Background Review to the anti-corruption strategy for Turkey (part of Activity 8.2 and Activity 8.3).

Its context is shaped by the draft anti-corruption strategy prepared in mid-2009 by the Prime Ministry Inspection Board (PMIB).

[*] The report is also informed by the requirements of UNCAC, which Turkey has ratified; Alan Doing was the editor of the original Technical Guide drafted to support the implementation of the Convention.

3. CORRUPTION: FINDINGS FROM THE BACKGROUND REVIEW

3.1 Introduction

In 2008, a report from the European Commission essentially summarised the internal and external perceptions on corruption in Turkey in stating that 'the overall assessment was that there had been limited progress in the area of *anti-corruption* with corruption remaining a widespread issue'.[1] To provide a contextual report on the perceptions, the Background Review – as part of this Output - surveyed, collated and assessed material from a range of sources in order to understand how corruption in Turkey was viewed, and what had been written both about possible causes of, and current and potential reform of, corruption.

3.2 Media and other Perception material

Corruption is a constant feature in the media. There is anecdotal evidence of significant and continuing corruption, nepotism and patronage at senior political, party and governmental levels, with similar evidence of routinised corruption, use of intermediaries and manipulation of procedures at administrative and local levels. The coverage suggests it is becoming worse rather than better. Further it suggests that, generally, there is little evidence of on-going efforts at government level either to initiate and sustain anti-corruption strategies or to improve public sector performance or delivery methods in a way that designs out, or reduces the opportunity and incentive for, corruption. The limited amount of citizen surveys suggests widespread, entrenched and worsening levels of corruption which colour more general perceptions of government and the public sector.

Further the identifiable trajectory, insofar as one can be detected, is not positive: a newspaper survey in 2009 suggested that nearly 50% felt the government was not 'fighting corruption effectively'. Overall, survey material appears to underline internal concerns and the need for reform: 'all target audience groups concur with the opinion that corruption is one of the leading obstacles in Turkey, maintaining a consensus on the leading causes and consequences of such improprieties. All target groups shared the same conclusion that the starting point of the spread of corruption is the public sector'.[2]

3.3 Academic Material

There is a range of academic material by Turkish and non-Turkish authors which cover legal, perception, institutional and overview assessments. Many address two issues: are there sufficient laws and institutions, and, if there are, where and why does corruption appear to continue? A number make the point that, 'in Turkey, a number of executive bodies deal with anti-corruption…However, none of these has been given a definitive leadership role and the relationship between these entities is ambiguous'.[3] Similarly Acar and Emek[4] argue that Turkey lacks 'a clear and comprehensive understanding and strategizing on the part of governments regarding the issues, actors, and policies involved in building a clean government in Turkey'.(p.193) They suggest that 'there is a growing need for "connectedness" in the country to enhance prospects for success in formulating and implmenting policies and programs aiming to build a clean government'. (p.201) where it is important to include the links between the issues and problems as well as 'bridges between the main players and parties'.

Those academics addressing the issues of tradition and culture note that the continuing countervailing influences of 'socio-political traditions' (a collectivist culture based on solidarity and traditional spoils culture), 'administrative traditions' (e.g. patronage in entering the public service, gift giving and taking, and keeping business relations with the

government department after retirement), and 'legal uncertainties' (e.g. lack of definitions of confidential information or lack of formal guidance on undue infleunce by senior political or administrative figures).[5] This is compounded by the application of new management practices and procedures onto existing administrative cultures without assessment, adaptation and a realignment of the control environment. A number of interconnected trends are also noted within the public sector, including political penetration of the administrative and judicial arenas, economic liberalisation favouring economic elites close to government and a collectivist and networked culture in the public sector which serve to reinforce rather than evolve the enduring concept of the 'unquestionable state'.[6]

3.4 External Survey Indicators

The material produced by international NGOs or international institutions in terms of anti-corruption indicators presents a similar picture. These suggest that Turkey shares with a number of other countries both low scores in the direct corruption rankings, as well as a poor performance in corruption-context indicators which 'measure' those areas. These include freedom of the media, informal economy, and so on - which are identified as likely to exist where there is also a propensity for corruption. A number of countries appear ranked with Turkey in more than one survey - for example, Morocco, Bosnia, Mexico, Russia, Sri Lanka – with Poland and Croatia in close proximity to Turkey in both corruption-associated and corruption surveys.

Many of the surveys come with methodological caveats; commonsense suggest that some of the rankings are seriously flawed (eg, ranking Turkey as #92 and the Democratic Republic of the Congo as #95 on Freedom House's Civil and Political Liberties table) while the prescriptive nature of categorisation leads to distorted results (for example, in the Global Integrity scorecard, under Category VI (Anti-corruption and Rule of Law) Nigeria scores 81 (Strong) and Turkey 67 (Weak) largely on the grounds the former has an anti-corruption agency and the latter does not.

Most surveys have little intrinsic value, offering generalised snapshots that offer neither explanation of country-specific causes, and nor country-specific bases for reform proposals. Their value tends to lie as awareness-raising or publicity tools. Drawing substantive conclusions from country surveys, rankings or indicators, and seeking an understanding of the causes of corruption as well as anticorruption reforms, therefore, should be treated circumspectly.

Nevertheless, the overall *impression* from all types of external surveys is that corruption is a pervasive presence in Turkey. Further the identifiable trajectory, insofar as one can be detected in external surveys, is again not positive.

3.5 Civil Society

One of the issues that emerges from domestic surveys and media reports is that, if there is such a public concern about corruption, how mobilised and effective is civil society to propose reform. While the material surveyed under 3.2 suggest a continuing and widespread public concern about corruption, the attention does not appear to influence voter choice or translate into organized public response (voters continue to re-elect politicians against whom corruption allegations or, in some cases, formal censure have been made). Indeed, when considered in terms of reports in the contemporary media and comments made in the academic literature about democratization, it is also clear that traditional practices such as nepotism, patronage, misuse of public resources on a clientalist basis and vote-buying at elections is increasing rather than decreasing. There is little evidence of visible or effective civil society activity in relation to corruption, and

little evidence of what would initiate such activity on a mass or sustainable basis. Most of the work on corruption has been undertaken by research institutes.

3.6 External Official Assessments

These have largely been conducted by agencies from international organisations of which Turkey is a member, or as part of the European Union accession process. These have been issued by the UN, the EC, Greco (Council of Europe) and SIGMA (OECD). The most recent include: the EC Council Decision of 23 January 2006 on the principles, priorities and conditions contained in the Accession Partnership with Turkey[7], the 2006 SIGMA report[8] on the Elements of a Public Integrity System, the 2006 Group of States against Corruption (GRECO) report for Turkey[9] and the 2009 EC Progress Report on Turkey[10]. Ranging from the IMF on fiscal transparency to the US Chamber of Commerce on inward trading, the reports noted a continuing and pervasive concern over administrative opacity and delay, the presence of corruption and successive governments' limited efforts to address these issues. Many would endorse the findings of the 2008 SIGMA follow-up assessment to its 2006 review when it reported that 'no significant achievement was recorded during the assessment period' in relation to anti-corruption projects and initiatives between 2006 and 2008, that anti-corruption policies seriously lacked ownership and that corruption 'continued to be a matter of concern'.

The reports share a number of common perspectives as to the reform process. For example, a 2004 report by the Division for Public Administration and Development Management, Department of Economic and Social Affairs, United Nations[11] notes that 'the fragmented structure of public administration with different institutions subject to different laws and unclear delineations of duties and responsibilities, as well as insufficient co-ordination and communication between public institutions and lengthy processing times for administrative procedures greatly impact on the ability of the government to prevent and control corruption'. The 2006 SIGMA report on the Elements of a Public Integrity System noted that, except in some areas, such as asset declaration and the financing of political parties, there was overall a sufficient legal basis for fighting corruption. It suggested that Turkey pursue a long-term anti-corruption policy that had clear political support, and included a range of initiatives – the role of Parliament and Inspection Boards to address corruption (the report did not endorse a single new agency), and a comprehensive strategy that addressed civil society, judicial independence, public sector reforms, simplification of administrative procedures and legally-binding codes of conduct. Probably the most important reviews are initiated by the EU as part of the accession process, and the GRECO reviews in 2006 and 2008. In the latter GRECO stated that only 6 of its 21 Recommendations had been completed to its satisfaction; the remainder had either only been part-implemented or not implemented. Overall it argued that 'Turkey could do much more in order to address GRECO's recommendations. GRECO is particularly concerned that several recommendations of principal importance have not yet been addressed'.

In November 2008, the EC stated on the basis of the GRECO findings that 'overall, there has been limited progress in the area of anti-corrupt ion. Corruption remains a widespread issue. There has been limited progress towards strengthening the legal framework and institutional set-up to fight corruption. The continuing absence of an overall strategy, action plan and coordination mechanism is a cause for continuing concern in this area. …Stronger coordination between the relevant government institutions is of key importance'.[12] In October 2009, the EC reported again that:

> Limited progress has been made in fighting corruption. In June, Parliament adopted a law to amend the Penal Code and the Code of Misdemeanours. This is to take account of GRECO recommendations, align with international conventions

and to implement the requirements of the OECD Bribery Convention and the recommendations of the Financial Action Task Force (FATF) concerning the prevention of money-laundering. The law strengthens the legislative framework as regards the liability of legal persons, prevention of money-laundering and foreign bribery.

The government, under the coordination of the Prime Ministry Inspection Board with the participation of other State institutions carried out a broad consultation with stakeholders including NGOs, with a view to preparing a national anti-corruption strategy. The ministerial commission established to enhance good governance and transparency has hardly taken any political initiative in anti-corruption issues.

For the first time, the Ethics Board for Civil Servants published four decisions, in 2009, concerning non-compliance with ethics rules by public officials, including an elected mayor and managers of public companies. However, no progress has been made on extending the ethics rules to academics, military personnel and the judiciary.

There has been no progress on limiting the immunity of Members of Parliament as regards corruption-related cases. The opposition supports measures in this respect. Parliament needs to establish a permanent ethics commission to deal with complaints and allegations. There is no code of conduct for Members of Parliament. Moreover, objective criteria should be established to define the conditions under which immunity could be lifted. The lack of control and verification of asset declarations remains a weak point in protecting the integrity system in parliament and government.

No progress has been made on adoption of legislation on the financing of political parties and election campaigns, which would increase transparency. There is no state body with the authority to audit election campaign financing. There has been no progress towards adoption of the new legislation on the Court of Auditors, which envisages the re-structuring and strengthening of the court.

Overall, the legislative framework designed to prevent corruption has been improved. However, corruption remains prevalent in many areas. Turkey needs to finalise an anticorruption strategy and to develop a track record of investigations, indictments, prosecutions and convictions[13].

3.7 Some Themes from the Reviews under 3.2 to 3.6

The first theme is the various reviews often share the same concerns over areas requiring reform, including parliamentary immunity, asset disclosure, party funding, poor coordination and cooperation of internal controls and audit functions, low citizen awareness and a political and public sector that does not reflect transparency and accountability. Generally they note the slow or non-existent reform progress and the continuing problem with governmental corruption, political influence, nepotism and clientalist politics.

The second is that there is no doubt that corruption is a continuing and pervasive presence, with little evidence that it is diminishing. Indeed, what evidence there is - of any consistency in terms of perceptions of corruption, domestically and internationally - suggest that corruption continues to be embedded in the political and administrative structures. Further, the combination of the political penetration of the public sector, the

nature of the state, the collectivist traditions within the public sector, the expectations of, and relationships between, the public and both politicians and public officials within a gradual shift from particularistic to universal values is extending and growing the presence of corruption. While this is not unexpected during such developmental trajectories, it comes at a time when there is significant external pressure for an organised, coherent and comprehensive response.

Third much of the material, from both academic and external agencies' reviews, notes that Turkey has substantial legal and institutional means to address corruption. Part of the reason that they do not appear to have significantly impacted on corruption may be, as noted above, the countervailing influences of enduring cultural traditions within the public sector, the nature of the developmental trajectory, the competing demands on and priorities of government, and the question of ownership of the reform process. Here a number of the reviews note the absence of an overall strategy and what a number of articles and reviews describe as the coordination, communication and *connectedness* between existing institutions involved in whole or in part in addressing corruption.

Fourthly is the issue of how this should be addressed. The material does reflect some clear divergences as to whether there is a question of culture to be addressed, better working between institutions, the introduction of new institutions, or a permutation of these. There are, as the first theme noted, a number of areas where current procedures and/or institutions are not working, or where developing areas (such as party funding) require a response that goes beyond existing arrangements. The divergences become apparent – and problematic – when they move toward a template approach rather than recognise some of the realities of Turkey that this section has tried to highlight. Thus GRECO calls for two new or designated institutions:

- a body with the responsibility of overseeing the implementation of national anti-corruption strategies as well as proposing new strategies against corruption. Such a body should represent public institutions as well as civil society and be given the necessary level of independence in its monitoring function:

- a specialised unit with investigative powers in cases of corruption, for the sharing of information between law enforcement agencies and to provide advice to law enforcement agencies on preventive and investigative measures.

In neither case did the Recommendations fully acknowledge the roles or potential of existing institutions or consider how they may be reconfigured, nor did they assess the legislative, procedural, lead-in timing, staffing and resourcing issues that they would precipitate in the Turkish context.

Fifthly it is worth noting that, under 3.4 and 3.6 above, many of the surveys, reviews, and evaluations of current projects, usually involving external agencies, only have a basic understanding of the laws, institutions and reform process in Turkey. There is some concern about the role of the reviews and reviewers/evaluators who should be, but often are not, acting as 'intelligent customers'. The question of detailed local knowledge, acceptance at face value of statements made to the evaluators, the absence of evidence-based findings and a lack of understanding of the workings of Turkish political and administrative institutions, laws and procedures and how they work raise issues about the credibility and relevance of authority of some of their conclusions and recommendations.

This means that work on anti-corruption projects, or reviewing progress, often does not take account of major cultural and political issues. Some reform proposals appear based on a pre-determined template while others make (mistaken) assumptions about why and how other countries' practice may work effectively in the Turkish context. They lack any

understanding of the institutional landscape, the organisational cultures, as well as issues of prioritisation, sequencing, timing, resourcing and achievability. This not only affects the credibility and sustainability of projects but also leads to some frustration (and possible disenchantment) on the part of existing Turkish agencies (noted by more than one academic study).

This report has identified one core component – the connectedness of the Turkish approach to anti-corruption. The recommendations of this report are therefore predicated on, as far as possible, trying to develop reforms on the basis of existing laws, institutions, and procedures and seeks as far as possible to avoid proposing new institutions but rather to seek to add value on the use of existing institutions, laws and procedures. In the next section, this report also notes the emerging anti-corruption strategy and seeks to develop its proposals to complement or integrate with its intentions.

4. PREVIOUS AND CURRENT ANTI-CORRUPITON INITIATIVES: CONTENTS AND ASSESSMENT

This section discusses previous anti-corruption initiatives; one involves the Legislature following the early 2000s scandals and the others involve the current government in previous sessions. There is also one current anti-corruption initiative involving the current government in preparation.

4.1 The Legislature (the Grand National Assembly – TGNA)[14]

The Parliamentary Inquiry Commission on Corruption (*TBMM Yolsuzlukları Araştırma Komisyonu*) was established in early 2003. It set up 5 sub-commissions with a number of areas for inquiry (these included: definitions; finance, trade and customs; energy, procurement, transportation, local government; health, social security and privatisation; ministries, NGOs, etc). The Commission submitted its report that covered both sectors and cases. The report containing number of reform proposals was submitted to the Presidency of the Grand National Assembly in mid-2003. The proposals included: amendments in various laws and requests for the parliamentary investigations into former politicians. It also proposed a permanent parliamentary commission (and consideration of an independent inspection agency to undertake inspections for parliament), along with the establishment of the Ombudsman, a Code of Conduct, the role of NGOs, an enhanced role for Inspection Boards (with the possibility of an independent status, common approach, and performance and risk-based inspections), media campaigns to raise public awareness, specialist prosecutors, legislative reform (eg, to banking secrecy, parliamentary immunity, procurement, approval before the investigation of public officials, post-retirement activities, gift-giving, and asset disclosure), quicker judicial processes and use of asset confiscation.

4.2 Previous Government Initiatives[15]

The 57th Government Programme included an intention to address corruption. A Guidance Committee was set up and a Prime Ministry Circular (2001/38) was issued in July 2001, seeking opinions of the state institutions in respect to effective public management and anti-corruption within their areas of jurisdiction. A Working Group was established and an international conference was organized in September 2001. This had wide participation, and its agenda focussed on the subject of improving transparency and effective public administration in Turkey. The outcomes of this conference were also used in drafting an anti-corruption plan. As a consequence Council of Ministers issued an Action Plan in January 2002 – Increasing Transparency in Turkey and Enhancing Good Governance in Public Sector (2002/3). It covered the following areas: public service delivery; regulation of public agencies and foundations; personnel; access to information and transparency; healthcare; inspection and audit; judiciary; money laundering; party and campaign finance; financial disclosure statements; local government.

The various activities to be undertaken within the designated areas were all required to be completed by December 2004 (of which a number were either completed or begun). In the same month another circular set up the Ministerial Commission for Enhancing Transparency and Improving Good Governance (2002/56), supported by a Technical Commission (public officials from various ministries headed by the PMIB) to provide the secretariat to the Ministerial Commission.

The 58th government campaigned in part on an anti-corruption platform and its Emergency Action Plan was announced after winning the election. This was intended to provide a 'roadmap whose milestones will be followed by politicians, bureaucrats and the

concerned sections of the society' and stated that the following actions would be undertaken: ratification of the criminal law convention on the corruption and civil law convention on the corruption; penalties concerning corruption and irregularity; the fields where public officials are not allowed to work shall be expanded and applied very effectively; financing of the politics shall be given a transparent nature; the concept of confidential information shall be re-defined in legislation; a dialogue shall be developed among government-public administration- judiciary-media and civil society in terms of non-corruption efforts; the justification of the law shall include the benefits and costs to be brought by the law. The reforms were to be implemented within 12 months.

In April 2006 the 9th Reform package was announced by the government. The proposals included changes to the law and procedures for public procurement, asset declaration, and the financing of election campaigns and political parties as well as draft laws on the Ombudsman and the Court of Accounts. On August 2007 another circular (2007/23) appointed the Minster of the Interior as head of the Ministerial Commission for Enhancing Transparency and Improving Good Governance.

4.3 Analysis

In terms of shared recommendations and their implementation the various proposals are included in Table 2.

Table 2: Anti-corruption Reform Proposals

Area	TGNA	2002	2004	2006	Delivery Status
Procurement	✓	-	-	✓	Law
Asset Disclosure	✓	✓	-	✓	No action
Party finance		✓	✓	✓	Draft law is being prepared by the Ministry of Justice
Ombudsman	✓	-	-	✓	Enacted; declared unconstitutional
Court of Accounts	✓	-	-	✓	Draft law is waiting for consideration by the TGNA
Code of Conduct (Council of Ethics)	✓	✓	-	-	Law, Regulation and Agency established
Role of Inspection Boards	✓	-	-	-	No Action
Access to Information/reviewing access to confidential information	✓	✓	✓	-	Law, Procedures and Agency established
Money Laundering	✓	✓	-	-	Law, Procedures and Agency established
Council of Europe Conventions	-	-	✓	-	Ratified but not fully translated into domestic legislation
Permission to investigate public officials	✓	-	-	-	No Action
Post-retirement	✓	✓	-	-	No Action
Civil Society; education, awareness, surveys	✓	-	✓	-	No Action
Reform Criminal Law	✓	-	✓	-	Law Reform
Agency Capacity	-	-	-	-	No Action

Disciplinary database	-	-	-	-	Established but not yet in operation
Cooperation/information-sharing	✓	-	-	-	No Action
Booklet	✓	-	-	-	No Action
Specialism in LEA and Prosecutors	✓	-	-	-	No Action
TGNA immunity	✓	-	-	-	No Action

By 2008 the main reforms introduced included: the law (and associated agency) on access to information, establishing the Council of Ethics (and associated Regulation), establishing the laws, units and procedures on financial management and internal audit control, banking, money laundering, and renewal of the Criminal Code and the Procedure Code (including harmonisation with the OECD Convention of Foreign Overseas Officials). The Council of Europe's Criminal and Civil Law Conventions, and EU Convention on moneylaundering and proceeds of crime, and the UNCAC were ratified. OLAF was recognised in terms of the control and audit of pre-accession funds.

The various areas of recommendations are mapped against the GRECO recommendations in terms of whether the GRECO recommendations mentioned them (GRECO rec/status) and/or whether GRECO was accurate in terms of their implementation (convergence/divergence) in Table 3.

Table 3: Mapping against GRECO

Area	Status	GRECO rec/status (S= satisfactory; P=Partial; N=Not Implemented	Convergence/ Divergence
Anti-corruption work co-ordinated	-	Rec i - S	Incorrect: Council of Ethics not an A-C body; Ministerial Commission inactive
Procurement	Law	No mention	-
Asset Disclosure	No action	No mention	-
Party finance	No Action	No mention	-
Ombudsman	No Action	Rec xv – P	Correct
Court of Accounts	No Action	-	Awaiting consideration by the TGNA
Code of Conduct (Council of Ethics)	Partial: Law, Regulation and Agency established	Rec xii – P Rec xiii - P	Incorrect
Role of Inspection Boards	No Action	Rec ii – N Rec xiv - N	Correct, although PMIB is responsible for strategy and will be responsible for coordination.
Access to Information/reviewing access to confidential information	Law, Procedures and Agency established	Rec x (re: fees) - S Rec xi - P	Correct
Money Laundering	Partial: Law, Procedures and Agency established	Rec ix – S Rec xxi – S	Part-correct: training taken place but not applied/MASAK has no compliance capacity

Council of Europe Conventions	Partial: Ratified but not fully translated into domestic legislation	Rec xix – P	Correct
Permission to investigate public officials	No Action	Rec viii – P	Incorrect
Post-retirement	No Action	No mention	-
Civil Society; education, awareness, surveys	No Action	Rec ii – N	Correct
Reform Criminal Law	Partial: Law Reform	-	Mentioned in responses by authorities
Agency Capacity	No Action	Rec iv – S	Part-correct. Training takes place but not systematic
Disciplinary database	No Action	Rec xvii – P	Part-correct; established but not yet operational
Cooperation/information-sharing	No Action	Rec iii – N	Correct – and no specialist agency
Booklet	No Action	No mention	-
Law on Investigating Public Officials	No Action	Rec viii – P	Not correct
Whistleblowing	No Action	Rec xvi – N	Correct
Specialism in LEA and Prosecutors	No Action	Rec vi – S	Part-correct. Only limited specialism
TGNA immunity	No Action	Rec vii – N	Correct
Independence of Judges	-	Rec v – N	Correct
Registration of Legal Persons	-	Rec xvii – P Rec xix – P	Correct
Guidance to tax authorities	-	Rec xx – S	Correct

4.4 The 2009 Anti-Corruption Plan

In mid-2009, the PMIB prepared a draft strategy - covering preventative, coercive and awareness measures (see Background Review). The plan has been circulated to interested parties both inside and outside Turkey and undergone a number of revisions. The current version, identifying the key components of the strategy, is summarised in Table 4:

Table 4: The 2009 Anti-corruption Strategy		
PREVENTION	**REPRESSIVE**	**PUBLIC AWARENESS**
• Making the finance of political parties and electoral campaigns transparent and auditable, • Monitoring the legal work about political ethics and providing necessary technical assistance, • Following up the necessary legal process for the establishment of ombudsman mechanism, • Following up the preparations for the Administrative Procedures Draft Law, • Reviewing the provisions of Law No. 3628 Law on the Declaration of Wealth and Fighting Bribery and Corruption regarding the declaration of wealth, and making the declarations of wealth transparent and more efficiently auditable. • Reviewing the legal provisions on the business areas in which those who have quit public positions cannot engage, and ensuring efficiency in enforcement, • Narrowing down the provisions of privacy and confidentiality which reduce the efficiency of fight against corruption, • Reviewing the public procurement system and practices within the framework of the principles of "transparency, competition, equal treatment, reliability, confidentiality, public supervision, and procurement of needs are being carried out under appropriate conditions and in a timely manner, and for the efficient use of resources" as stipulated in Article 5 of the Public Procurement Law, • Enhancing transparency and accountability in the settlement development, licensing and other processes of local administrations, and making the audit of local administrations and their subsidiaries more effective, • strengthening the capacities of audit units in charge of and authorized for fighting the crimes of corruption, • making recommendations to relates agencies for the identification of areas of corruption risk as specified in the audit reports prepared by internal auditors under Law No. 5018, and for taking the necessary measures, • establishing separate ethical principles for each professional group in public administration and preventing conflicts of interest, under the guidance of Board of Ethics, • carrying out a study with the private sector and non-governmental organizations on the prevention of corruption, • strengthening the roles of media and press in fighting corruption, and eliminating the factors that weaken their role, • establishing a database about the results of judicial processes on crimes of corruption as well as disciplinary crimes.	• Reviewing the judicial privileges of all public officials as well as the permission system applied in the investigation of public officials, • establishing legal and administrative infrastructure for the protection of those who notify the incidents of corruption in both public and private and non-governmental organizations to the authorized bodies, rewarding those who make correct notifications and punishing those make unfounded complaints and notifications, • ensuring efficient cooperation, exchange of information and coordination among the judicial, inspection and police units in the investigation of crimes of corruption.	• informing the citizens about the rights assigned to themselves by laws and other administrative arrangements and the authorities they can apply to when they face an unjust treatment, and simplifying the complaint mechanisms, • compiling the anticorruption legislation in various laws and secondary regulations in a booklet and distributing them to related agencies and institutions; and distributing brief and explanatory illustrated brochures about the crimes of corruption and their penalties, to citizens, • implementation or outsourcing of corruption surveys regularly by TUIK, and sharing the results of these surveys with the public, • including subjects about the importance of honesty, awareness about citizenship and points to be considered in the use of public resources, in the curricula of the Ministry of National Education and higher education institutions. • rewarding of individuals and entities who take active role in fighting corruption by professional chambers, and publication of white lists including members who have not been involved in corruption, • organizing events on December 9, "World Anticorruption Day"

In terms of addressing existing, or introducing new areas and activities for reform, the mapping of the current initiative against previous initiatives is summarised in Table 5 (* marks new areas or activities).

Table 5: Mapping Turkish Anti-corruption Initiatives					
Area	**TGNA**	**2002**	**2004**	**2006**	**2009**
Procurement	✓	-	-	✓	✓
Asset Disclosure	✓	✓	-	✓	✓
Party finance		✓	✓	✓	✓
Ombudsman	✓	-	-	✓	✓
Court of Accounts	✓	-	-	✓	-
Code of Conduct (Council of Ethics)	✓	✓	-	-	✓
Role of Inspection Boards	✓	-	-	-	✓
Access to Information/reviewing access to confidential information	✓	✓	✓	-	✓
Money Laundering	✓	✓	-	-	-
Council of Europe Conventions	-	-	✓	-	-
Permission to investigate public officials	✓	-	-	-	✓
Post-retirement	✓	✓	-	-	✓
Civil Society; education, awareness, surveys	✓	-	✓	-	✓
Role of Media	✓	-	-	-	✓
***Debarment for contracts**	-	-	-	-	✓
Reform Criminal Law	✓	-	✓	-	✓
Agency Capacity	-	-	-	-	✓
Disciplinary database	-	-	-	-	✓
Cooperation/information-sharing	✓	-	-	-	✓
Booklet	✓	-	-	-	✓
Law on Investigating Public Officials	✓	-	-	-	✓
***Whistleblowing**	-	-	-	-	✓
Specialism in LEA and Prosecutors	✓	-	-	-	✓
TGNA immunity	✓	-	-	-	-
Use of risk assessment	✓	-	-	-	✓
Local government	✓	-	-	-	✓
Role of audit	✓	-	-	-	✓

4.5 Assessment

There have been a number of anti-corruption initiatives, including the Plan currently under consideration. A number of the laws, procedures and institutions proposed in previous initiatives have been established. On the other hand, the perceived pervasiveness of

corruption suggests there are context issues that affect their effectiveness; it also suggests that a holistic or comprehensive anti-corruption approach may also be necessary. The question of connectedness, as well as of ownership, and of any monitoring and measuring capability, may also need attention.

Thus while outputs may have been achieved, there are concerns about the outcomes and impacts in terms of anti-corruption activity. The new initiative is not wholly (or even significantly) focussed on institutions and recognises the need to make existing institutions and procedures not only work more effectively but also more closely. It also reflects an awareness and understanding of the awareness and cultural dimensions in order to deliver more concrete reforms within a wider ethical context. In recognition of this – and also as a consequence of the findings produced by the project through two components, the systems study and research studies – this report identifies the second core component, in addition to that of connectedness, as that of awareness of public ethics and the prevention of corruption. The findings in relation to this component are addressed in the next section.
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5. SETTING THE CONTEXT FOR ANTI-CORRUPTION STRATEGIES

5.1 Introduction

The project specification proposed assessing the effectiveness of those institutions, laws and procedures in existence as a consequence of previous initiatives to support - or identified as likely to impact on - the investigation or prevention of corruption. It also proposed undertaking research assessments of causes and perceptions of corruption in a number of areas.

5.2 The Systems Study

The objective of Output 8 was as follows:

> The effectiveness of codes of conduct and other anti-corruption measures in Turkey will have been evaluated and recommendations for future prevention strategies are available and coordination of measures to promote ethics with other anti-corruption measures in Turkey ensured.

To achieve this objective the Systems Study looked at four areas:

- Effectiveness of AC measures through Code of Ethics
- Effectiveness of AC measures through the Public Information Action
- Effectiveness of AC measures in Criminal Law
- Effectiveness of AC measures through disciplinary provisions in the legislation and existing structures

The Systems Study noted that the 2003 Law on the Right to Access to Information (# 4982) was in place, as were responsible offices in most public bodies which appeared to work within the specified timescales and deliver the requested information. It noted that the law set up the Board of Review of Access to Information (BRAI), which handles appeals against refusal to provide information; both these new developments are in addition to the Prime Ministry Communications Centre which also handles requests for information through its own network (BIMER). The criminal law is in place and covers nearly all aspects of financial crime and corruption and the specialist unit that uses the law has no particular issue with the contents or their application (although the older law governing public officials and requiring permission for investigations under its authority remains an issue – see Section 7). The disciplinary system is an established procedure across the public sector and the use of the civil service law – where the offences are couched in much more general terms - offers a wide scope both for addressing misconduct and for the application of a range of sanctions. Collecting and collating the figures is underway through the State Personnel Office; current figures are not significant and most will relate to offences under the civil service law. Finally the Council of Ethics for Public Service (CEPS) was set up in 2004, drafting a wide-ranging code of ethics for public officials and investigating breaches of the code by specific senior public officials. It has also required public bodies to set up ethics commissions and been the beneficiary institution for this project. This, in relation to CEPS, involved an extensive public ethics training programme, and included guides and training materials, training of trainers, and the delivery of both the purpose of the training porgramme as well as experience of the training materials to members of Ethics Commissions and senior public officials.

Overall, the four areas reflect the presence of legislation, institutions and procedures. While there are areas of institutional or procedural weakness, none of the four areas are wholly ineffectual or inadequate to their stated purposes. On the other hand, there is not

necessarily a direct correlation between the effectiveness of anti-corruption measures and, for example, public information action provision in itself. The public information action, and disciplinary provisions and procedures, are not in themselves primarily concerned with anti-corruption. Nor does information provided by their activities offer any clear guidance on whether they facilitate or inhibit the effectiveness of anti-corruption measures. Further, there is nothing in their current activity that would suggest that further changes would specifically benefit anti-corruption measures. Indeed, and despite the areas where access to information is proscribed by law (and which could be amended), the heavy use of access to information is rarely used for anti-corruption purposes, in part because there is no active civil society seeking evidence of misconduct and in part because the media appears to be able to obtain documentation from a variety of sources (and of which access to information under the law is not a primary source). In relation to criminal law, and although the law is still not fully compliant with the requirements of the UN Convention Against Corruption[*], which Turkey has ratified, the concerns about the criminal investigation and prosecution of corruption lie elsewhere (see Section 7). Of more relevance is the role of the Council of Ethics for Public Service and the effectiveness of the Regulation (the code of conduct) in terms of anti-corruption measures (and which will be addressed in Section 6).

Where the Systems Study provides evidence of concern is in relation to the joined-up nature of the areas and the need to clarify roles and responsibilities as part of a wider ethical or preventative environment. It states:

- *Instead of fragmented laws and regulations, a comprehensive "anti-corruption law" should be enacted; structure and language of the present national legislation should be simplified; and the links between this general anti-corruption law and other national legislation should be clearly regulated.*

- *A general "code of conduct" for all elected and appointed public officials should be prepared. In the light of this general code and international standards, special codes of conduct for certain categories of public servants may also be regulated or rearranged.*

- *The role of CEPS (awareness, prevention and investigation roles) and its relations with other existing auditing and supervisory bodies should be clarified; and the structure (autonomy), authority (monitoring or investigating), span of duty (categories of public servants) and capacity (administrative and technical capacity) of CEPS should be improved.*

- *Links between CEPS and BRAI should be established; the accommodation of the Board within CEPS should be seriously considered.*

- *Links among CEPS, institutional ethics commissions, disciplinary boards and authorised superiors for personal performance appraisal should be reconsidered; necessary steps (e.g. merging or mixing ethics commissions and disciplinary boards) should be taken; and relations among criminal proceedings, disciplinary proceedings and ethical inquiry should be clarified by changing the related legislation.*

[*] Under Article 252 of the Criminal Code, asking for a bribe is not criminalised. Other areas may also require amendment; Article 260 on misconduct requires public officials to act together rather than as individuals.

- *The consistency of the related policies and the degree of co-ordination, co-operation and even integration among policies and institutions should be enhanced; the links among responsible authorities for ethical conducts, law enforcement bodies (particularly the national police, the gendarmerie and the customs control officers), public prosecutors and courts should also be clarified and strengthened.*

- *In addition to the enactment of new anti-corruption legislation, the enforcement of legal provisions and continuous monitoring of activities of all public servants in the light of this new legislation should be improved.*

- *Institutional and central data collection systems about various AC measures (e.g. applications to access to information unit, information about disciplinary actions and sanctions) should be developed.*

- *More specialised ethics training should be provided to the members of institutional ethics commissions and disciplinary boards; and particularly to law enforcement officials, public prosecutors and judges dealing with corruption cases.*

These issues are addressed in Section 7. In addition, the System Study identified a further significant issue. On culture, the state and society, the System Study states:

> *It should always kept in mind that developing an infrastucture for establishing an ethical administration is a long term and hard task. It necessitates not only legal and institutional reforms but also transformation in mentality and attitude. Experience of other countries provide insightful hints for any national reform attempt in this area but it is clear that most of solutions come from national experience just like problems stems from. Therefore, dialogue between national actors (e.g. the parliament, government, public administration and civil society) should be strengthened; trust between public servants and citizens should be established.*

This issue is a core theme in the research studies undertaken as part of the project.

5.3 Research Studies

Within the project the objective of Output 6 was as follows:

> At least 10 research studies are available on the risks of corruption in relation to unethical behaviour and have been discussed in public

The10 research studies were proposed as follows:

1. Conflict of Interest in Public Administration	6. Ethical Standards and the Title/Land Registry
2. Public Bidding and Ethics	7. The Shadow Economy
3. Planning at Local Level	8. Professional Associations and Ethics
4. Ethical Conduct in Law Enforcement	9. Ethics and the Customs Services
5. Ethical Conduct in the Health Services	10. Ethics, Culture, and Society

Following on from the comments of the Systems Study, all the research studies in one way or another drew attention to the question of culture. They reported an acceptance that the standards and conduct expected of society or among public officials that reflects the western democratic model are not in place; as the Planning Research Study notes, ‘the majority of Turkish society is not against corruption. On the contrary, corruption is

even presented as something natural in Turkey's cultural codes through several idioms and proverbs. Turkish people are loyal to each other rather than the principles. The proverb, "A cup of coffee commits one to forty years of friendship" is a part of people behavioural pattern'. In other words, the practice of paying for public services (usually to expedite the process or ensure the right result) can be seen as acceptable in a culture where the relationship is primarily directly between the citizen and the public official dealing with his or her business. More specific standards, including those introduced through the Council of Ethics for Public Service are even more, as the Conflict-of-Interest Research Study noted, non-contextualised or internalised in the minds of public officials: 'it is striking that "avoiding conflict of interest," "accountability" and "unlawful benefit/gift receiving" which are the most important principles of the Regulation and the Ethics Contract, none referred to them in priority. The first two concepts are new to Turkish administrative culture as well as to the society and they are in the process of taking their forms'.

The current perceptions have wider implications. While there is some evidence that both public officials and the public understand the distinction between gift-giving and bribery. Nevertheless the continuing and acceptable use of payments and middlemen, as well as the belief that social status, political influence and connections (such as nepotism, the misuse of green cards, the award of contracts, and so on) influence public decisions or actions, and generally contribute to poor or negative images of the public sector among the citizens. In particular, these portray the power of the public official, and slowness, opacity and complexity of decision-making and other procedures, as allowing public officials to control and misuse their authority. In turn this perception may also explain why citizens might also use such methods themselves (as suggested in the police and tax surveys). A further problem is that experience from one office translates into wider perceptions. Thus tax (PRA) personnel accept that the public have the perception that they may receive unlawful benefits; 'they state that the main source of this perception is that the public do not differentiate the personnel of the PRA from other government officials and think that they are corrupt, too….The PRA personnel think that the taxpayers offer to provide unlawful benefits because they think that these practices are common in the public offices'.

In such an environment, the Research Studies warn of the need to act. Failure to do so will lead to a longer-term loss of trust in the state and will encourage not only the continuation of existing bad practices but creates a context where new types of misuse can easily become established. In the case of health care, the most common traditional unethical practices, methods or activities in medical practice have been knife payment/additional payment, self-referring and unnecessary tests/intervention/prescriptions. Now the main emerging area of concern is the power of pharmaceutical firms, and their ability to offer greater and more obvious inducements. Pharmacists, for example, consider that the most common unethical practices, methods or activities in medical practice were vacations in Turkey or abroad, gifts/gift certificates, preferring products that come with promotions, and cash payments; even pharmaceutical representatives accept the realities of cash payments, gifts/gift certificates, vacations in Turkey or abroad, paying for medical congress expenses, paying for medical congress attendance with spouse, and giving of white goods.

Many of the Research Studies propose similar recommendations in relation to ethics and corruption. A number note that both monitoring and review procedures, as well as an understanding of what is expected of a modern public official, are generally absent; the Law Enforcement Research Study noted that 'none of those who were interviewed has mentioned about the existence of any systematic "departmental control". Departmental control mechanism is nonexistent'. Others emphasise the importance of simplification of legislation and procedures (for example, as suggested by the Planning Research Study)

and the provision of clear guidance for citizens. For example, Customs 'should regularly inform its service users, in short and brief style, and make them more conscious about custom procedures in such matters as basic information about custom procedures, how citizens should behave when they face non-ethical behaviours in custom directorates, the fact that they can do custom works without using and other mediators and custom advisors and what will be their responsibilities if they themselves behave non-ethically'.

Nearly all the Research Studies also call for, as proposed by the Law Enforcement Research Study, conceptual and practitioner ethics training for all public officials: 'Police ethics curriculum should be updated and include current issues police officers may be facing in their daily lives. Ethic education should not be limited to abstract ethical advices, but include scenarios taken from real life'. This is also recommended in the Land Registry Research Study which propose that 'regarding the fact that erosion in such basic societal values of honesty and straightness contributes to a great extent to increase in corruption and other non-ethical behaviours, an ethical consciousness campaign is needed for the society as a whole not only for public servants. Even, an effective ethics education in various levels of national education system, perhaps beginning with primary schools must be provided in order to make citizens more conscious about ethics issues and to prevent some problems in service provision resulting from citizens'.

The reasons for this approach is emphasised by two Research Studies, which essentially warn that ethical standards need to be internalised, and done so before people enter public service. Part of the reason for this, as the Ethics, Culture and Society Research Study points out in a quantitative analysis, is that the continuing concept of a collectivist public culture and an asymmetric relationship between the citizen and the state, creates an environment antithetical to the development of public ethics – see Table 6 for results of adult respondents who work in both the public and the private sectors on perceptions of the state (and which emphasise the comments in 3.2 about the need to start reform with the public sector).

Table 6: Frequency Distribution for the Effect of Society's Understanding of State on the Ethical Perception [from Ethics, Culture and Society Research Study]

Behavior	***Agreed***		***Disagreed***	
	F	*(%)*	*F*	*(%)*
The understanding of the state and the structure of patriarchy cause people to regard the state unquestionable and sacred.	980	63.1	572	36.9
The sacred understanding of the state in the society causes the public employees to perceive themselves superior and to adopt the public institutions more than necessary.	1034	66.6	518	33.4
The fact that there is an understanding of unconditional obedience and respect to the superiors in our society has a negative effect on the participation of the decisions made and on questioning the actions of the superiors.	1071	69.0	481	31.0
The traditional structure of the society and the strong relative bonds causes the public employees to provide privileges to their relatives.	1211	78.0	341	22.0

The other important finding from the same study is that those in both public and private sectors have a variable understanding of, and acceptance of, ethical principles based on the Council of Ethics for Public Service Regulation. This reinforces the findings of the Conflict-of-Interest Research Study and, indeed, in some areas of activity proscribed by

the Regulation, public officials are more tolerant of non-compliance than the private sector.

The Ethics, Culture and Society Research Study itself clearly demonstrates the importance of the family, school and the environment of relatives and neighbours for laying the foundation of understanding and internalising ethics. It reports the much less important roles of the person's workplace, the media and NGOs. It also notes 'internalizing ethical principles appears much more important than, for example, external sanction'.

This wider approach is also supported by the Professional Associations Research Study – 'all the organisations which were interviewed think that ethical education should start in the family, ethics and honesty should be learned in the early years of childhood at primary school with how to become good citizen seminars and should become a part of the person'. In reinforcing the message from the System Study, the Ethics, Culture and Society Research Study states:

> '… along with the administrative and legal regulations the ethical awareness of the society should be promoted in order for the ethical principles to be favored. Ethical perception does not develop free from the social culture, for this reason in public administration ethical principles should be taken as cultural values. Every individual in the society, especially the politicians, public administrators and state employees should have the awareness of what purpose they are performing their task. Every individual in their decisions on behalf of the public and public works should question themselves on whether they are performing a specific task on their behalf and interest or for the public interest. In order to prevent corruption and bribery in public administration, the cultural infrastructure should be institutionalized based on the principles of justice, equality, transparency and accountability…'.

5.4 Summary

In other words, the Systems Study and the Research Studies emphasise the importance of ethics and culture as two dimensions necessary to address corruption in the Turkish context by establishing a more ethical environment within which the investigative and control dimension can work more effectively. Indeed, establishing a more effective ethical environment is a significant development toward ensuring that specific anti-corruption initiatives work in a compliant culture and context. In other words, of the two core components, this Report would argue that, for an effective anti-corruption approach through a national strategy to the connectedness of the institutions involved to be effective, then it is essential to spread and embed ethical awareness. The next section discusses the work on ethics, ethical environments and the prevention of corruption.

6. DEVELOPING THE ETHICAL ENVIRONMENT FOR ANTI-CORRUPTION STRATEGIES

6.1 Introduction

Anti-corruption strategies work better when the ethical environment is positive – that is where the awareness of acceptable and unacceptable, legal and illegal conduct is known and followed by all public officials and the public, thus removing ambiguity and uncertainty for them and citizens. It also provides a context for the more efficient and responsive delivery of public services. It improves citizen trust in government and begins to diminish the traditional image of the 'unquestioned' or sacred state. To achieve a more ethical environment, however, is a lengthy process, requiring coordination and continuing support although there is evidence from the project that some ministries have begun to include an ethics dimension to their reform activities.

6.2 Current Ministry Activities

A number of ministries are working in this direction:

Health: As part of its Health Transformation Programme it has undertaken a number of initiatives – patients rights units in every institution, patient satisfaction surveys, a patient hotline (with about 1000 calls a day, 50% asking for information and 20% about ill-treatment), a transparency policy which includes a web-page with an access to information form and contact email addresses for senior management, procedural reform to the recruitment and promotion of staff, legislative reform to the relationship between pharmaceutical companies and health professionals (the rules on hospitality, conferences, etc are contained in the Regulation), and legislative reform to the relationship with doctors (requiring a choice between opting-in as full-time state doctors or opting-out).

Specifically it has set up an Ethics Commission and with 2 trainers will begin cascade training. The Commission has already undertaken a survey on the basis of which the Department of Strategy Development will prepare a standards document. In terms of overlapping responsibilities, the Department will deal with audit and financial issues, such as transparency and procurement, while the Commission will deal with ethics training and awareness.

The hotline takes 'knife money' complaints (where a doctor offers treatment for payment) which will be dealt with by administrative sanctions or by the Ministry Inspection Board (with some 200 staff). Main areas of corruption are procurement, knife money and illegal pharmaceutical product invoicing by pharmacies.

Land Registry(LR): The LR has some 17,000 staff; there are 60 Inspection Board staff and 4 Internal Audit staff (IR). The Land Registry has significant volume of ownership and transfer activity, where gift-giving has been an issue. The first control initiative came from an IB report, following police inquiries, which led to the introduction of cameras in offices, audits, etc. to address not just petty bribery but also fraud and the use of false documentation.

In 2009 the LR set up its Ethics Commission in the General Directorate, for which terms of reference are being drafted. It is proposed that each of the 22 regional offices will also have an Ethics Commission, with supervisory responsibility resting with the General Directorate. The 22 Ethics Commissions will define the issues they will address and how they will be addressed (regional variations in terms of

respect, nepotism and gift-giving are already noted), as well as undertake training. It will give consideration to its role in terms of the implementation of the Council of Ethics for Public Service Regulation, for those public officials who fall outside the Council's remit.

While there is concern at the absence of guidance from the Council of Ethics for Public Service, the Ethics Commission has already adapted the training material. It has also decided to use its IA staff to undertake ethics assessments, focussing in systems and transparency, within the Ministry of Finance IA strategy (it is worth noting that the LR has no links with the Court of Accounts which is still auditing the LR 2005/06 accounts). On the other hand there is awareness of the Inspection Board/IA overlap and the need for a clear segregation of duties. At the same time management will need to be educated in the role of IA, particularly in the implementation of IA recommendations.

Customs: Set up a working party in 2007 after a WCO meeting to propose general reforms – clarification and simplification of customs law, introduction of risk-based audit, improved and automated personnel processes, improved infrastructure, including database systems, automated processes and call centres. There are two control sections; the Controllers Unit (located throughout the structure which deal with the bulk of investigations relating to staff and the Inspection Board deals with about 300 cases a year involving corruption; some go to the KOM smuggling unit but most are dealt with through the disciplinary board where the legal context is based on smuggling or customs legislation rather than generic legislation. The Ministry has begun awareness raising and publicity, externally and internally (in relation to the latter ethics now forms a component of most training while some 10 dedicated courses on ethics have been delivered).

6.3 What the Current Project Has Provided

Part of the work of the current project has involved the design and development of a comprehensive generic public ethics training programme tailored for the Turkish public sector context, and including all materials necessary to administer and deliver the training. Over 120 trainers have been trained in the programme which focuses on ethical principles and dilemmas, intended to make public officials aware of what the ethical principles and conduct are required by the Council of Ethics for Public Service Regulation. It has been delivered to Ethics Commissions and senior public officials across the country.

The training, however, is only part of the development of an ethical environment which concentrates on corruption prevention. Ministries need also to develop organisational policies, management procedures and practices including:

- procedures to ensure compliance with the legislation relating to public officials;
- mechanisms for promoting awareness of adherence to the 'Regulation on the Principles of Ethical Behaviour of the Public Officials';
- the effectiveness of the Ethics Commission, Inspection Board and Discipline Board in terms of improving controls and providing punitive and deterrent measures for unethical conduct;
- the existence and application of internal policies, codes and procedures for guiding and requiring ethical standards.

Guidance for ministries is clearly laid out in the Implementation Guide, which provides the management context and responsibilities for extending and embedding the training

provided in the Facilitators Guide, together with the CD-Rom (which includes all training material).

6.4 What Needs to be Done Next

However, the work of ministries in relation to ethics training needs to be coordinated, supported and monitored, and the relationship with the Council of Ethics for Public Service clearly defined to support the prevention of corruption approach.

6.4.1 Council of Ethics for Public Service

The project reviewed the structure, staffing and focus of the Council of Ethics for Public Service. The main suggestions were:

- that, with the establishment of Ethics Commissions, the Regulation be reviewed to allow some provisions to be delegated to Ethics Commissions, some provisions to become the responsibility of the Ombudsman (when activated) and some handled by the disciplinary processes. Both the Council of Ethics for Public Service and Ethics Commissions should focus primarily on those parts of the Regulation that address the public duty-private interest and conflict-of-interest issues; public service delivery and personal behaviour (respect, rudeness, etc) belong elsewhere. The range of sanctions for breaches of the Regulation should be expanded to ensure a wider range of sanctions (most similar bodies will include: mediation or further ethics training, transfers, verbal or written warnings, suspensions, fines, dismissal);

- The Council of Ethics for Public Service should review and monitor the development of the Regulation into a ministry-specific code of conducts based on the Regulation, to be implemented by Ethics Commissions and monitored by Internal Audit (see section 7);

- The Council of Ethics for Public Service should be responsible for all inquiries of breaches of the revised Regulation for certain levels of public official but they may decide to investigate more serious breaches/allegations involving senior public officials and delegate the investigation of less serious breaches to Ethics Commissions. These in any case should be enabled by law to implement the Regulation on all other grades of public officials not currently covered by the remit of the Council of Ethics for Public Service. Both the Council of Ethics for Public Service and Ethics Commissions' staff (unless the current practice of using seconded Inspection Board staff is continued) should be trained in and work to the same inquiry methodology; the Council of Ethics for Public Service would act as an appeal arena against decisions of Ethics Commissions. Consideration may also be given to the process of involving Ethics Commissions to be integrated into the general disciplinary arrangements. The Council of Ethics for Public Service would maintain and publish a central database of cases, and quality-assurance both the inquiry methodology and the uniformity of sanctions;

- The Council of Ethics for Public Service should concentrate its main activity on the development of, and monitoring of, ethical environments in public bodies. In particular, it should oversee and quality-assure the expansion of the ethics training programme provided by the current and proposed EU projects, promote the number of ethics trainers, and trainers trained to train other ethics trainers, in ministries in conjunction with Ethics Commissions. It should require and deliver additional ethics training programmes for new recruits, those being promoted to management positions, and so on. This will require a clear set of agreed protocols with ministries'

Ethics Commissions. On their responsibilities in relation to training, the development of ethical environments, and breaches of codes of conduct.

- Finally, the Council of Ethics for Public Service should take the lead, and in conjunction with the Ministry of Education, for the development of ethics awareness programmes in schools and universities, as well as, in conjunction with the ministries, for the development of public awareness campaigns.

The Council is small, but issues of resources, budget, independence, and so on, are of less important than a clear realignment of functions and responsibilities (although the former are discussed in the next section). The revision of the Regulation provides the institutional means to consider the distribution of functions and responsibilities to allow the Council to focus on its policy and oversight roles while Ethics Commissions take on the role of ensuring the implementation of the Code through training, investigating minor breaches of the Regulation, review of procedures and so on, in order to establish and develop an ethical culture and environment.

6.4.2 What the Follow-on Project Could Provide

In support of this development, the EC and Council of Europe have proposed a further project. This includes the development of the Council of Ethics for Public Service's capacity to deliver their own training events and to support the delivery of the training events with Ethics Commissions; to give Ethics Commissions more capacity; to support those Ethics Commissions that have already begun to develop ethical environment programmes; and to promote a wider awareness of and understanding of public ethics.

The objectives will be to:

- Embed and consolidate the work from this project
- Extend the cascade training and prevention of corruption awareness
- Focus on key ministries and areas to develop ethics work.

This will be achieved in 3 general areas as follows:

1. Council of Ethics/Training/Widening Scope of Code

- The staff of the Council of Ethics for Public Service will be trained and have the necessary working tools and procedures to manage, oversee and measure the dissemination and implementation of the Training Strategy
- The Council of Ethics for Public Service staff will be trained in coordinating measures to promote ethics and the Training Strategy in Turkey through a Ethics Coordinating Committee
- More trainers will be trained, and many will be trained in how to train other trainers within ministries to deliver ethics training

2. Ministries

- The Ministry of Interior will be supported in adapting the Ethical Training Strategy and materials for application at governorate and local government levels
- The Land Registry is supported as an 'Island of Integrity' in terms of the effectiveness of a comprehensive ethical environment as the basis for the development of a wider cross-public sector on which future prevention strategies may be based

- The Ministry of Finance will be supported in training of internal auditors and Inspectors in undertaking ethics audits as an integral part “internal control system” is organized under Part Five of Public Financial Management and Control Law No. 5018 dated 10/12/2003

3. Awareness

- Under the guidance of the Council of Ethics for Public Service, prevention of corruption awareness campaigns will be developed in ministries, professional associations, schools and universities, and the general public, relations will be established with media and NGOs, including the creation of TV spot films and advertising material, competitions for brochures and slogans etc.

These initiatives will work to support ministry Ethics Commissions in their responsibilities in developing ethical environments or cultures that promote ethical principles of transparency, impartiality, honesty and accountability to be followed by its public officials, and that ensure the cascading of awareness and acceptance of ethical principles through the use of training and reviews of the ethical culture and structures.

6.5 Summary

Developing the approach on promoting awareness of public ethics is part of the second core component whereby aligning and enhancing units or institutions toward one specific aspect of the prevention of corruption should be the basis for developing an anti-corruption framework across the public sector. This – the connectedness of each institution wholly or partly involved in the prevention of corruption – ensures that roles and responsibilities are coordinated and integrated into a wider strategic approach. This is the subject of section 7.

7. RECOMMENDATIONS FOR FUTURE PREVENTION STRATEGIES AND IMPROVED MANAGEMENT, COORDINATION AND MONITORING OF ANTI-CORRUPTION STRATEGIES

7.1 Introduction

The previous section concentrated on awareness of public ethics – a prevention of corruption approach that makes public officials and citizens aware of acceptable conduct by public officials. This requires them to act honestly, impartiality and in the public interest. Section 7 addresses joining the relevant institutions that comprise the corruption prevention and investigation control environment in a holistic or comprehensive anti-corruption framework. The purpose of this report is not to draft the anti-corruption strategy – which is properly the responsibility of the Turkish government - but make proposals and recommendations in support of the anti-corruption strategy. In this context, the report works to an assumption that any anti-corruption strategy will focus on developing an environment denying the opportunities for corruption, reducing the incentives for corruption, increasing the risks of detection and sanction, and encouraging public officials and citizens not to become involved in corruption. Having addressed prevention through awareness, the Report now discusses recommendations in support of the anti-corruption strategy through improved management, coordination and monitoring of those institutions, including those focussing on public ethics awareness, involved in implementing the strategy. It does so primarily in terms of existing institutions and agencies and focussing on their roles and connectedness in working to implement the strategy.

7.2 The Institutions and Agencies

There are a number of agencies who should or could be involved in working on anti-corruption approaches (the list of laws is contained in the Background Review; they are not in themselves significantly at variance for expected standards but there are issues concerns their full implementation and use).

The agencies are grouped into 4 sectors that will provide the framework, the first of which locates the work on public ethics discussed in section 6.

7.2.1 Standards Sector

This sector is concerned with standards expected of public officials from two perspectives. The first is concerned with the relationship between the official and the public, including access to information and reasons for decisions, and some formal means of redress against administrative actions that adversely affect the citizen. The other is concerned with the need to ensure that the public officials keep their personal interests separate from their official duties, and undertake means to avoid conflict of interest between the two. The sector is also concerned with the monitoring process of how the public sector should manage its procedures and arrangements for ensuring the proper conduct of public officials and expenditure of public funds.

What is Expected: How countries address these issues varies but, in some form or other, many have agencies, administrative courts or internal procedures covering ombudsman, complaints, and redress functions. In terms of freedom of information, many countries have an agency dealing with freedom of information. What authority any external agency has to secure redress or access to information and what procedures are followed do vary.

In relation to conflict of interest, many countries have codes of conduct, asset declaration requirments, and on. The procedures in terms of what is declared, whether the requirements fall within criminal, administrative or other frameworks, who verifies the information and whether or not the information is published, and what are the sanctions for false information, do vary, although a number have agencies which deal with prevention, ethics and other similar functions.

What is in Place: The Office of Ombudsman has been approved in principle but the relationship with the Legislature has been deemed unconstitutional.

In relation to access of information, under law 4982 every public body has a unit, usually located in the department or agency's public relations department where staff may be full or part-time depending on the size of the institution. All requests have to be dealt with within a given time frame. The requests are usually sent to the relevant part of a ministry or agency for reply. Refusal can only usually be turned down if they relate to judicial cases, national security, personal privacy, etc. There is an appeals process to the Board of Review to Access to Information, located in the Prime Ministry. This has 9 Board members appointed by the Council of Ministers (types of appointment are listed in Article 14) and 9 seconded staff. The Board also collates statistics from the units annually; the report does not differentiate by type or area of complaint and there is no data on the number of units. The Board adjudicates on reasons for refusal to provide information. It has no legal powers for enforcing its decisions. In addition there is the BIMER system, an electronic request for information system based on petition law and run out of the Prime Ministry Communications Centre. All public bodies have access to the system through designated departments and their sub-divisions (about 24000, with some 29000 personnel authorised to access and respond directly to the citizen). BIMER does note areas of concern (such as HR, ethics, access to information) but these are not collated.

The Council of Ethics for the Public Service was set up in 2004 and established a code of ethics. It comprises a Board of 11 members, nearly all retired senior public officials appointed by the Council of Ministers, and a staff of 7 (plus 3 trainees, 3 administrative staff and 3 temporary Ministry of Justice Inspection Board staff to undertake inquiries). All staff are secondees. The Code – set out in a Regulation - governs the ethical conduct of all levels of public officials. The Council deals with levels above that of General Manager; ministries and other public bodies are responsible below that level. The Council performs the necessary investigation and research on the basis of allegations of violation of the regulation for those public officials who come within its Terms of Reference (or inform the relevant authorities of other categories of public official, or the prosecutor if the violation involves a possible criminal offence). Its only sanction is to publish in the Official Gazette the name of any public official of any proven violation (it has done this twice). The Council may also undertake studies to establish the ethical culture within the public sector and to support the studies to be performed in this regard. The Council is also authorised to examine, when necessary, the declarations of assets of public officials.

What Needs to be Done: The constitutional embargo on the establishment of the Office of the Ombudsman should be addressed. The proposed structure and the role of Ombudsmen actually undertaking inquiries into citizen complaints needs a thorough review. The two information procedures - the BIMER system and that overseen by the Board of Review to Access to Information - should be reviewed and merged. The network of BIMER contacts would facilitate the work of a revised Ombudsman.

As noted in the previous section, the Regulation of the Council of Ethics for Public Service is too broad. Its components should be divided between the Ombudsman (public service standards) and the Council (conflict of interest). In relation to the latter, minor

complaints should be delegated to ministry Ethics Commissions and dealt with through the established disciplinary system, the work of which will be monitored by the new role of the State Personnel Office to whom the causes and consequences of disciplinary activities will be reported. The Council should reposition itself as a strategic regulator, supervising the work of Ethics Commissions in relation to the Code, overseeing the implementation of ethics training and development of an ethical environment, and investigating serious breaches of the Regulation (for which a proper inquiry procedure should be established and undertaken by inspectors seconded from ministry Inspection Boards). The Regulation should be amended to allow a range of sanctions, along the lines of those used by Professional Associations.

In terms of resourcing this sector, consideration should be given to the use of shared physical infrastructure, administrative support, investigators between the Ombudsman, the Board of Review to Access to Information, and the Council of Ethics for Public Service that would allow economies of scale and budget maximisation. Consideration should also be given to moving the Board of Review to Access to Information, and the Council of Ethics for Public Service from the Prime Ministry, possibly in terms of establishing a Public Services Standards Commission.

7.2.2 The Scrutiny Sector

This sector is concerned with auditing of procedures and arrangements for ensuring the proper conduct of public officials and of the expenditure of public funds.

What is Expected: The basis of an effective scrutiny sector is an appropriate internal and external audit structure. The core functions of Internal Audit should be broadly defined as: a basic audit process reviewing the accuracy with which assets are controlled, income is accounted for and expenditure is disbursed; a system based audit, reviewing the adequacy and effectiveness of financial, operational and management control systems; a probity, economy, efficiency and effectiveness audit reviewing the legality of transactions and the safeguards against waste, extravagance, poor value for money, fraud and corruption; a full risk management based audit. In brief, Internal Audit is established by the management of the public body and, although operating independently, is part of the overall management function of the organisation.

External or State Audit's overall purpose is to carry out an appraisal of management's discharge of its stewardship responsibilities, particularly where they relate to the use of public money, and to ensure that these have been discharged responsibly. This work will include an appraisal of the work of Internal Audit and staffing capacity. State Audit will take their guidance on competences and work from the international organisations such as INTOSAI.

Key elements of the quality of actual external audit comprise the scope/coverage of the audit, adherence to appropriate auditing standards including independence of the external audit institution, focus on significant and systemic financial management issues in its reports, and performance of the full range of financial audit such as reliability of financial statements, regularity of transactions and functioning of internal control and procurement systems. Inclusion of some aspects of performance audit (such as e.g. value for money in major infrastructure contracts) would also be expected of a high quality audit function. The scope of audit mandate should include extra-budgetary funds, autonomous agencies, parastatals and any body in receipt of public funding. While the exact process will depend to some degree on the system of government, in general the Executive (the individual audited entities and/or the ministry of finance) would be expected to follow up of the audit findings through correction of errors and of system weaknesses identified by the auditors. Evidence of effective follow up of the audit findings

includes the issuance by the Executive or audited entity of a formal written response to the audit findings indicating how these will be or already have been addressed.

External and Internal Audit have core roles in the scrutiny function. Apart from its role as a component in the internal control environment, Internal Audit can act as an organisation's own watchdog on matters of propriety. Internal audit's focus on risk and internal controls and detailed knowledge of its organisation places it in a powerful position to detect issues of propriety and review ethics arrangements. Close liaison with an organisation's internal audit is therefore likely to greatly help external audit, and those bodies involved with the prevention and investigation of corruption in other sectors.

External audit should review and, where appropriate, to report to the Legislature on issues relating to standards of financial conduct in public bodies and aspects of the arrangements set in place by the audited body to ensure the proper conduct of its financial affairs, including the work of internal audit. The Legislature should have an appropriate specialist committee to scrutinise the reports and call for public officials and relevant documentation. The procedures of the Legislature should allow for the authority to enforce such requests. and to monitor corrective actions taken.

This role should be an integral legislative function in exercising scrutiny over the execution of the budget that it approved. A common way in which this is done is through a legislative committee(s) or commission(s) that examine external audit reports and questions responsible parties about the findings of the reports. The operation of the committee(s) will depend on adequate financial and technical resources, and on adequate time being allocated to keep up-to-date on reviewing audit reports. The committee may also recommend actions and sanctions to be implemented by the Executive, in addition to adopting the recommendations made by the external auditors. Unless defined by statute, all such reports should be made public. The process of scrutiny by the specialist committee of the Legislature would also constitute a significant deterrent against misconduct and acts as a powerful vehicle for promoting beneficial change in the management of public organisations.

What is in Place: The introduction of Internal Audit paralleled the decision to abolish the Inspection Board system. This stalled in the Constitutional Court but the Internal Audit structure was still created so that two systems cover some areas of commonality. As part of the programme to improve the management of public finances (Public Financial Management and Control Law - 5018), all ministries are required to set up arrangements for financial management and an internal audit system (article 55) to manage financial information, ensure the accounting records are held correctly and protect assets and resources. Article 56 also includes a requirement to ‘prevent irregularities and frauds in all kinds of financial decisions and transactions’ and to ‘prevent the misuse and waste of assets and protect against losses’. Article 57 includes a requirement to build ‘high professional values and an honest administration concept’.

The Ministry of Finance has responsibility for determining internal control standards (By-Law in 2005), which include: ethical values and honesty; and notification of faults, irregularities and corruption. The Public Internal Control standard is already available as a guide and a control environment work plan (current situation, envisaged action, deadlines, and so on). Ministries are required to have an Internal Control Monitoring and Steering Board and a Public Internal Control Standards Preparation Group. The latter is required to issue a report on the current situation and complete the work plan. It is anticipated that the Internal Control framework will be in place by 2011

The Internal Audit Coordination Board (IACB) looks at risk areas and guidance on the five main component standards. In relation to Ethical Values and Honesty, this requires

awareness of ethics rules, and its application along with transparency and accountability applies to all staff. The Standard also requires that staff who report faults, irregularities and corruption 'shall not be subjected to unfair and discriminatory treatment". There are no minimum staffing levels for internal audit units (what has to be done by internal audit is laid down by law; how it is done is the responsibility of the ministry concerned). The qualification will be the IIA qualification. Some audit units may use trained staff remaining in their current posts (such as Inspectors or controllers). Such staff will be trained and certified by the Internal Audit Board (over 800 have been trained this way).

The Court of Accounts is the State Audit (the judicial appellation follows the French model in form but not practice) and sends its reports to the TGNA, although there is no designated committee to receive its reports and undertake hearings. There is also no allocated time for debates on the reports. It undertakes compliance and performance audits on the revenue, expenditure and property of some 6700 public bodies. It achieves less than 10% audits a year; many are several years in arrears. It has no investigative powers and little relationship with Inspection Boards; the role with Internal Audit has yet to be determined.

Parliament (the Grand National Assembly of Turkey - TGNA) comprises 550 deputies, elected through a General Election held no longer than every 4 years (a reduction from 5 through a 2007 amendment). Deputies must be Turkish citizens, over 25 who have performed military service and not been convicted of a range of offences. Judges, prosecutors, university teachers and public officials are barred from candidature. There are Standing Committees of the TGNA; the main ones are Constitutional, Planning and Budget. All MPs are governed by the Law on Asset Declaration but all MPs are exempt from the Regulaton of Law 5176 on ethics.

What Needs to be Done: The IA development is new but the responsibility for ethics and probity is already stated. This responsibility should be adapted to include monitoring and reviewing the roles of ministry Ethics Commissions in promoting and supervising the development of ethical standards. It should also be able to comment on how ministries handle asset declarations procedures – discussed below - as part of its role to comment on the development of an ethical environment. There should be a formal requirement to report to State Audit on the management arrangements to address ethical issues.

In theory there is no conflict or overlap between the roles of Inspection Boards and Internal auditors (and even external audit) but with no centralised law, it may require further legislation to clarify spheres of influence within the national strategy. Similar issues also apply to the Council of Ethics for Public Service, the Internal Audit Coordination Board, Ethics Commissions and Internal Audit.

The major areas of weaknesses lie with the Court of Accounts and the Legislature. State Audit should access to and report on the expenditure of public funds through any body on an annual basis and within an agreed timetable for submission to the Legislature. All reports should be submitted to the Legislature which should have the authority to investigate late submissions or failure to cooperate with the State Audit. Unless defined by statute, all such reports should be made public. State Audit should also be required to review and, where appropriate, to report on issues relating to standards of financial conduct and control procedures in public bodies and aspects of the arrangements set in place by the audited body to ensure the proper conduct of its financial affairs.

The Legislature should maintain oversight of the use of public funds through the State Audit who should be required to pay particular attention to issues of regularity and propriety. The State Audit should also have a role in investigating and reporting on

impropriety encompassing fraud, corruption and other forms of misconduct, with the right to report to a specialist committee of the Legislature.

What Should be Included I: Party finance is a major area of concern and is poorly regulated. Freedom of association is allowed although the Constitutional Court can debar a party from receiving state funding or ban a party for anti-constitutional activities (including challenging the 'secular' Republic). Voter registration and management of elections is the responsibility of the YSK. There are 60 parties, of whom 40 are too small to audit so the focus is largely on those parties which receive state funding (calculated on basis of vote threshold, subject to a 10% minimum). Regulation of party funding is the responsibility of the Constitutional Court (Constitution Article 69). It has 5 staff seconded from the Court of Accounts for this purpose.

There is a detailed law on party funding, with guidance on source of donations, levels and so on, as well as parties' trading and borrowing restrictions. There are no standardised procedures for party accounts; parties are responsible for their own accounts, records, tax liabilities, and so on. Part of the funding comes from the state but the bulk is from business, and often provided covertly and/or in cash. The difficulties for auditing funding and expenditure are: the levels of party organisation (all of which can receive and spend contributions although the central party machinery is intended to collate the information), quality of documentation and establishment of those responsible for illict expenditure. There is no risk-based approach and audits tend to be undertaken on the documentation provided – all other access would require a court order (this is done about 3 times a year). The sanction concerns the return to the state of any illegal expenditure or donation; evidence of criminality (such as embezzlement, illegal expenditure, terrorist funding)will be forwarded to the prosecutor (this has happened about 9 times in the last 2 years). Party accounts, including names of donors, and the audit reports are not published.

A number of countries have an Elections Commission and a Party Registration Commission; a number combine the functions. The roles and responsibilities cover: registration of voters and supervising elections, including allegations of voter fraud; approving eligibility of electoral candidates; registering parties; monitoring party finances (including sources and amounts), and candidate and party elections expenditure. Consideration should be given to expanding the roles and responsibilities of the YSK as an independent Election Commission to administer all aspects of party, voting, and election standards, including: electoral awareness; voter eligibility and registration; updating electoral rolls; candidate eligibility, deposits, registration and asset declarations; supervision of campaign publicity; length of campaigns; supervision of the conduct of the election process, including access to voting, voting materials, counting, etc; monitoring campaign expenditures; monitoring party contributions; investigation of allegations of bribery or voter interference, and; legal frameworks for appealing and voiding election results.

Wh*at Should be Included II*: One other area still needs to be addressed. The approach to conflict of interest is completely ineffective. Law 3628 is the legal framework for declaration of assets. It covers all public officials, including government ministers and parliamentarians. The form to be completed is attached to the Regulation which covers the details of declaration. Assets should be declared on appointment and very five years (when the year ends in an 0 or 5), with stated sanctions for non-compliance, or when the existing declaration changes significantly. The Regulation addresses tangible assets for declaration, such as paintings, shares, debts and so on, but does not clarify the question of salaries and income (gifts are not specifically mentioned in terms of asset declaration but are essentially banned by the law). Rather than require a gross annual statement, including sources, it requires a figure held in banks or other financial institutions at the point of declaration. Asset declarations also apply to spouses and children. All

declarations are submitted to the appropriate head of the institution (for example, the Speaker of the TGNA for MPs and the Deputy Under-Secretary for public officials) who is formally responsible for holding them (but not for verification). A full report is attached to the Background Review.

All submissions are confidential and there are criminal sanctions for disclosure (increased if the disclosure is to the media). Sanctions address non-submission, concealment, incorrect declaration, and unlawful acquisition of assets, and range from imprisonment up to five years, a fine, disqualification from office and loss of the asset, to an official warning. This is not implemented

The requirements are wholly ineffectual if they are not properly completed and verified by the recipient agency. Consideration must be given to reforming the whole process – document information and verification, access, and review – to make it a useful aspect of prevention in ensuring transparency and monitoring disclosure, conflict of interest, and asset verification. The reform process should take account of existing regulations on hospitality, travel and gifts that are contained in the Regulation. The procedures are a management responsibility that should be supervised and monitored by Internal Audit and State Audit. Allegations relating to appointed public officials would be inquired into either by CEPS or ministry Ethics Commissions, using IB staff; for elected public officials this would be the responsibility of the TGNA through an appropriate Commission. All submissions should be made electronically, and accessible, subject to appropriate data protection and other safeguards, by those agencies, such as CEPS, IBs, or KOM, undertaking formal breach of Regulation or corruption-related inquiries.

7.2.3 The Inspection Sector

This sector is about the inspection procedures and public officials where they may have acted improperly or misused public funds.

What is Expected: the Inspector-General (IG) system of government, of which the Turkish Inspection Board (IB) system is a variant, is an established independent framework within ministries which conducts independent investigations, audits, inspections, and special reviews of personnel and programmes to detect and deter waste, fraud, abuse, and misconduct, and to promote integrity, economy, efficiency, and effectiveness in ministry operations. The approach thus involves a monitoring approach 'exercised through traditional financial compliance audits, highly individualised criminal investigations, program evaluation, or policy analysis, but it relies on others for action'.[16] In addition such IGs may act collectively in terms of developing and devising a framework of operational independence, cross-cutting initiatives, protected reporting arrangements and adequate resources. In addition, and through a designated lead body, the IG system can develop, maintain, revise and monitor the implementation of effective, coordinated anti-corruption policies across the public sector.

This strategy would designate responsibilities across the public sector, and cover: effective practices aimed at the prevention of corruption; means for the periodic evaluation of relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption; requiring all public bodies to produce anti-corruption action plans; collaboration with other agencies (such as the Court of Accounts, the IACB, and the Council of Ethics for Public Service) and with relevant international and regional organizations; participation in international programmes and projects aimed at the prevention of corruption; undertake a systematic review of progress on the strategy or action plans; and the annual publication of a report on progress, areas of risk and cross-cutting issues.

What is in Place: All ministries and departments have IBs which have a long history. The legal framework for IBs is contained in the specific law relating to a ministry – hence some variations in powers – and each IB is directly attached to the minister in terms of line responsibility. Some large ministries where there are independent undersecretaries, also have boards of controllers undertaking similar functions (eg, Revenue Administration). IB staff have protected positions (By-Law Article 12) and a long training period: 3 years' training for assistant inspectors, and 10 years to become a senior Inspector. Most IB appointments are career appointments in the same ministry. Much of the strengths of the IB structure come from the formal powers and access that each has. For example, the Ministry of Finance IB has 144 staff plus 60 IT and administrative staff. Like other IBs it has responsibility for generic offences (such as declaration of assets – 3628; proceeds of crime – 5549; prosecution of public officials – 4483). Specifically relating to the Ministry it has responsibilities relating to the organisation and duties of the Ministry – Decree law 178; Public Financial Management and Control law – 5018; Tax Procedure law - 213. These include right of access to all state funded departments and agencies to undertake inspections into their expenditure. It undertakes audits and inspections of public expenditure, public assets (such as the buying, management and disposal of assets) and public procurement (Law 5018), system and process analysis, tax fraud, corruption, money laundering and proceeds of crime. Tax examinations are undertaken under Article 135 of the Tax Procedure law 213 (investigating the 'correctness of taxes to be paid). The strongest powers come from the tax audit and money laundering legislation. These can include cross-tax audits using the tax intelligence database, risk-based audit by sectors, VAT audit, etc.

IBs undertake routine audit and inspection, and investigations into offences relating to the Ministry. IBs work to managed annual work programmes, and reactive investigations. Work programmes are communicated with the head of the section or unit to be audited, and findings mutually agreed. Much of the work is standard audit work. The framework concerns: efficiency and effectiveness of activities in terms of the aims and legislative context of the section or unit, the protection of assets and resources, a satisfactory accounting system, management of financial and management information, staff, areas for reform. A follow-up assessment also takes place.

Investigations are usually divided between those into staff and into external individuals or entities. The former may be either disciplinary (using Law 657) or criminal (using Law 4483); the latter are criminal (using Law 3628 or Law 5549). Inspectors follow the requirements of the Criminal Procedure law and have training in evidential packages (and have stated powers under certain laws – thus under Law 3628 investigators have access to bank accounts). Investigations are done to a standard format: permission from the Deputy Under-Secretary or Minister if under Law 4483 (misconduct of official duties and misuse of power), letter of authority, documentation, interviewing, spot checks, etc. Investigations can be undertaken with prosecutors. Under Law 4483 cases are dealt with administratively. Cases involving Laws 3628, 5549, 1567, and other cases go to the prosecutor. The operational powers also include: access to any information from any source (including banks, hiring of experts, suspending of a public official during an investigation, surveillance (with a warrant). IB reports are recommendations only (although these range from recommending criminal proceedings, dismissal and recovery of public assets).

The lead IB is the PMIB, established in 1984 under the Law on Prime Minister's Office (3056, Article 20 and the By-Law). It is seen as the lead IB; it can instigate, lead and coordinate complex inquiries and cross-ministry inquiries under the formal authority of the Prime Minister who must also authorise any investigation (and who also provides the authority for implementing findings from a report). It sets the principles of the IB system and reviews the legal procedural frameworks under which they operate. It covers all

public bodies, NGOs and private companies. With the Prime Minister's circular 2006/32, the PMIB is designated as the counter-part institution of OLAF, responsible for inquiring into cases relating to EU-funded projects. The PMIB has some 40 staff with powers to require information from any sources. Operationally it does not work to an audit plan as most of its work relates to inspections, derived from information from other IBs, ministers, members of public, and so on. It can initiate its own inquiries, or develop an inquiry out of an existing inquiry. It tends to undertake around 130 cases annually, and usually involving senior officials or cross-cutting inquiries. If it declines to take on a case it is usually because of the level of the public official involved, because the case is already with the prosecutor, the offender is difficult to determine, and so on.

What Needs to be Done: PMIB cases require the authority of the Prime Minister (which has never been refused). The investigation process is standard and done to criminal standards of proof. All completed investigations can be either open or confidential and all make recommendations as to action (from disciplinary action to possible prosecution). Once signed off by the Prime Minister the recommendations have the force of an official order and the recipient agency or ministry is required to respond in terms of what action has or has not been taken on the recommendations (which must be included in full in the response). Cases involving MPs and ministers are also undertaken but no recommendations are made other than those involved have immunity under Article 102 of the Constitution. If passed to the prosecutor, it is the prosecutor who makes a request to the TGNA for lifting of immunity so an investigation can take place (about 100 such cases are submitted annually; none are allowed). The question of immunities is also relevant to a range of public officials under Law 4483 where no personal gain is involved. The overall issue of immunities is discussed below.

Consideration should be given to developing the IB structure as the main focus for delivery and monitoring of the anti-corruption strategy within the public sector, and integrating the work of Internal Audit into this process. The IB structure would need to become more independent of ministerial and Prime Ministerial supervision in relation to their operational work, while remaining within the ministry structure. Additional resources, including seconded staff, should provided to the PMIB to undertake a leadership, collating, coordinating, information-sharing and joint inquiry role, as well as establishing a central database for shared intelligence and case monitoring with the IB structure. Some form of central coordinating committee should be created to develop inter-IB activity and consider cross-cutting issues; additional reporting lines tom State Audit and legislature should be developed.

7.2.4 The Law Enforcement Sector

This sector is concerned with effective investigation and prosecution of corruption, and in so doing, acting as a prevention of corruption deterrent. This sector is concerned with pursuing those responsible for misconduct in the publice sector and for the misuse of public funds.

What is Expected: Either an independent Anti-corruption Agency or Commission or a dedicated unit with a law enforcement agency with the expertise and experience to undertake complex financial investigations, integrated with specialist prosecutors and working within an effective criminal justice process.

What is in Place: There are 2 forces: the National Police (NP - with some 200,000 staff) and the Gendarmerie (with similar numbers but the majority of these are doing military service). The Gendarmerie is a division of the armed forces and reports to the Army HQ; it is also related to the Ministry of Interior as the rural police. The NP deals with urban areas; the Gendarmerie with rural areas. Both have the same departments covering the

same areas of rsponsibility. With changes to the growth of cities, there is often a problem of boundaries.

The NP comprises 5 DGs and 39 departments; KOM is a department with the DG responsible for foriegn affairs, Interpol, etc. Set up in 1981, KOM has 10 sections – financial crime, organsied crime, drugs, technical support, research, cybercrime, HR, drugs dogs and TADOC (the training unit that offers courses to overseas forces). Its areas of responsibility cover WMD, human trafficking, smuggling of cultural items, organised crime, counterfeiting (such a credit cards), forgery, corruption and cybercrime. There is no specific remit for public sector corruption; cases tend to involve organsied crime activity. There are 5600 staff; over 400 in Ankara and 5168 spread across 81 regions. The Ankara caseload for 2004, the last year for statistics, was 163, involving 4129 persons. Around 690 of these were public officials (there is no breakdown by type of case, whether these are appointed or elected public officials, and the conviction rate, although most of the areas involve procurement). The bulk of KOM's work involves drugs, smuggling and organised crime; in terms of financial crime most of the cases involve fraud and counterfeiting. Bribery and corruption accounts for 3-4% of the work in this area. The Public Order department tends to deal with routine corruption. KOM is networked with a central database which can be interogated by I2; information from the database can be supplied to MASAK and the Gendarmerie.

Money laundering is an offence under Law 4208 (passed in 1996). Regulations are issued to the Regulated Sector by MASAK, the Turkish FIU located in the Ministry of Finance. It has 155 staff (61 are 'specialists'; the remainder are adminsitrative and clerical). It receives around 5000 SARs a year (up from 519 in 1999); these are not yet submitted electronically and about about 30% of the post-1997 archive is now on the database. Its departments are: foreign relations, legislation, SARs and intelligence, data entry, regulated sector, TF, AML awareness, proactive intelligence. No section has more than 10 staff.

Possible AML offences are checked by an auditor and notified to a prosecutor. Law 4028 requires proof of an illegal source and proof that the offender knew the funds were illegally-obtained. It is the prosecutor who determines whether or not a breach of the law has taken place. The prosecutor deals with all confiscation and seizure matters. Confiscation is possible for instruments and proceeds of crime, including value confiscations. Transfer and conversion of, and profit from, the proceeds of crime may also be confiscated. All confiscation requires a conviction. While that part of the law dealing with object-confiscation, value-base confiscation is seen as problematic in practice in relation to income of third parties, transfer of the burden of proof and unrealised enrichment. The burden of proof is to criminal standards unless relating to property disproportionate to income (Law 3628).

Investigations are prosecutor-led and/or supervıised. The Chief Prosecutors Office in Ankara has 160 public prosecutors, divided into general specialisms such as smuggling, juveniles, public officials and so on. About 6 deal with public officials and tend to work on KOM cases. Of the 3500 cases annually, about 5% may have a corruption component Simpler cases are investigated by the prosecutor; more complex cases will involve tasking KOM and other police to underake surveilance, conduct interviews, work beyond the office catchment area, etc. Special investigation techniques, such as intercepts, covert operations, etc) were allowed by warrant under the Law 4422 (now under the criminal and criminal procedures code - 220) relating to organised crime. In Ankara investigations under the organised crime and illicit assets law (3628) do not involve any prior authority but the civil service law does. Problems arise when there is more than one offence under the different laws. There continuing problems investigating politicians because of immunities, and senior civil servants because of authorisation requirements.

There is limited police and prosecutor contact with MASAK, with no unilateral access to SARs. Identity of those named in SARs is seen by MASAK as confidential and MASAK only send to prosecutors those SARs they consider offer substantive evidence of money-laundering or proceeds of crime. Allegations from Inspection Boards also go to the prosecutor but many are discussed with the Minister or Deputy Under-Secretary, which may cause delays in forwarding cases. The police consider that there is a lack of enough experienced prosecutors with whom to work; prosecutors have high workloads and there are no specialist courts.The prosecutors consider KOM competent but there issues accessing experts from other agencies. There are issues of physically obtaining information (for example, having to approach land registry offices separately when there are over 700). There are delays over information-sharing; MASAK may take up to 6 months to report back (which means that the prosecutors may work more frequently with the Banking Supervisory and Regulation Board). On the other hand, both police and prosecutors work regualrly with Inspection Board officials on cases.

What Needs to be Done? KOM has the requisite expertise and experience to undertake corruption investigations, subject to an increase in resourcing. Consideration should be given to a team-based approach within a dedictaed unit within KOM, and linked more closely to the IB strcuture (possibloy through staff exchange or more joint working as well as access to a shared database. Consideration should be given to the inclusion of SARs as part of the database). Staff should have training in financial investigations, and work should ensure early involvement of prosecutors. There is a need for a more substantial revision of laws – or consideration of a new law – relating to restraint, seizure and confiscation for a simpler and more regular use of the recovery of the proceeds of crime as a central part of criminal and civil investigations, focussing on the control, confiscation and recovery of the benefits of, or from, corruption. This will also require closer coordination and cooperation with MASAK, possibly through the secondment of staff and on-line acess to SARs material either to the PMIB or KOM or in relation to the propsed shared database.

Consideration should be given to the training of judges and prosecutors in corruption-relatedd offences. Guidance should be given to judges on the stance of the European Court of Human Rights on the acceptability of restraint, seizure and confiscation provisions as an integral aspect of any corruption prosecution. Designated prosecutors should work with KOM officials and consideration could be given to designated courts to fast-track corruption cases.

Laws relating on data protection, official confidentiality and information-sharing should be reviewed to ensure the quick and full exchange or transfer of information relating to possible corruption-related activity.

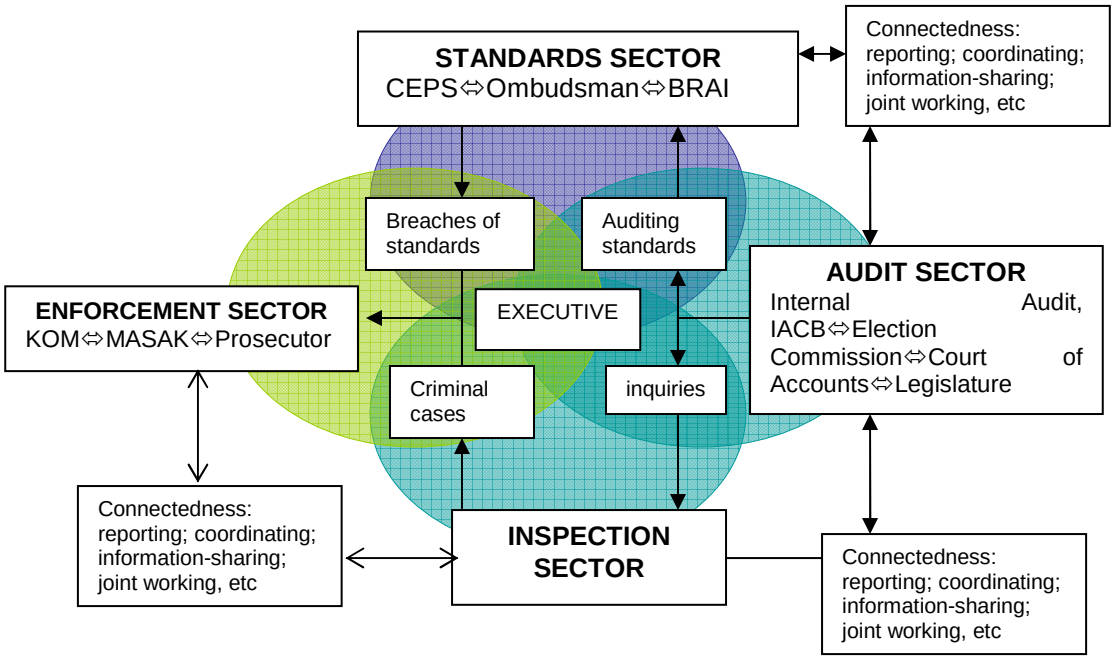
What Needs to be Included: A significant deterrent to an effective investigations and prosecution strategy is the continuing use of immunities in Turkish public life. The President, the Prime Minister, Ministers, and Deputies have immunity, including from arrest or interview before or after election and any sentence imposed on a deputy before or after election is suspended for the duration of parliamentary servıce[17]. Public officials are protected from initial investigation in relation to certain laws – see the System Study – and may only be investigated after Deputy Under-Secretary approval after a pre-investigation. In the case of corruption and organised crime offences, money laundering offences or failure to declare assets this does not apply – although permisson from the minister is needed for all investigations of Deputy Under-Secretaries and governors. The requirements on immunities should take measures to establish or maintain an appropriate balance between any immunities and the possibility of effectively investigating, prosecuting and adjudicating corruption offences. Thus, where such immunities exist,

constitutional or other legal means should remove all immunities from appointed public officials and provide for a suspending of immunities relating to elected public officials to allow a full investigation to take place as expeditiously as possible.

7.3 Connectedness: Managing, Joining-up and Monitoring the Sectors

Within each sector, the recommendations in 7.2 above also include the basis for connectedness, cooperation and communication in that a range of activities are, or potentially are, inter-connected and inter-related by the nature of the work. There are, as noted above, obvious areas of connecting, coordinating and communicating between sectors, again because of the nature of the work and to promote inter-agency activity. This should be achieved by a formalised regular intra-sector and inter-sector commission to coordinate activities, discuss cross-cutting issues, share information, joint intra- and inter-sector working, and so on, so that connectedness is an operational and procedural reality within the overall framework as laid out in Table 7.

Table 7: Prevention of Corruption Framework



To manage the work of the sectors, to more effectively to join-up what they do, will require clarification of laws and procedures to sharing information, to ensuring operational independence, to exchanging or sharing staff and undertaking joint work but the key initiatives will rest with ownership and leadership of the approach, both within the public sector and external to the public sector, to oversee, guide and report on the work within and between sectors, and on the roles of the intra- and inter-sector commissions.

7.3.1 Internal Ownership and Leadership

In order to institutionalise the question of ownership within the public sector, including responsibility for facilitating the management, coordination and monitoring the anti-corruption approach, should lie, as noted above, with the PMIB. Its overall responsibilties should include:

- undertaking the collection and collation of adequate information or statistical data concerning criminal convictions or disciplinary measures imposed on public officials for corruption offences or breaches of the Regulation/codes of conduct;

- undertaking analysis of trends of causes and consequences of corruption and thus an objective assessment of risks;

- oversee systematic analysis by sectors of risk factors (e.g. conflicts of interest, securing of improper advantages, absence of rules on reporting of offences committed within the administration, etc.) and of the sectors exposed to corruption (e.g. public procurement, health care provision, issuance of permits and licences);

- Developing a better knowledge of the vulnerable sectors and develop relevant policies and practices for better prevention and detection of corruption;

- Receiving reports from the sector commissions;

- Maintaining a database of, and disseminating information, that may facilitate the work of the sectors in preventing, detecting and investigating alleged corrupt activity;

- Monitoring and reporting on the progress of the implementation of the national anti-corruption strategy, allocating responsibilities and requirements for action plans across sectors and monitoring performance delivery;

- Reporting to the Legislature on the progress of the implementation of the national anti-corruption strategy.

7.3.2 External Ownership and Leadership

The reporting must be to the Legislature. The Legislature has the constitutional responsibility on behalf of the electorate to hold the Executive to account. Both the PMIB and State Audit should submit annual reports to the Legislature which should have the authority to call the Executive, heads of ministries, sector agencies and so on, to discuss and explain any aspect of the implementation (or non-implementation) of the national anti-corruption strategy.

The power to give the government authority to spend rests with the Legislature, and is exercised through the passing of the annual budget law. If the Legislature does not rigorously examine and debate the law, that power is not being effectively exercised and will undermine the accountability of the Executive to the electorate. At the same time, the Legislature is also responsible on behalf of the electorate to review and monitor how those funds are spent. Again, failure to do so means that power is not being effectively exercised and will undermine the accountability of the Executive to the electorate.

In exercising that accountability, the Legislature's responsibility will include ensuring that proper standards are maintained in the conduct of public business, that the spending of public money is done with honesty, that agencies responsible for public ethics, inspection and investigation are adequately resourced through the national budget, and that public sector values lie at the core of all decisions and activities of elected and appointed public officials.

7.4 The Common Goal

Both institutions under 7.3 take common and joint responsibility for ensuring that the progress on, and the connectedness between the institutions responsible for, the national anti-corruption strategy share an overall approach that reflects the specific roles and perspectives of the different agencies within sectors, and between sectors, that builds a practical, prioritized and measurable framework that is owned by the institutions involved and suitable for monitoring, review and revision. The two lead agencies will be responsible for:

- Setting out clear goals and timelines for those expected to contribute to the achievement of goals;
- Identifying any law, institution or procedure that may inhibit progress, and addressing them appropriately;
- Identifying and weaknesses in the coordination, cooperation, communication and connectedness of the framework and approach;
- Ensuring that plans of action can and should be made public, ensuring overall transparency and helping to mobilize popular support and pressure to achieve the expected goals;
- Clarifying what actions must be taken, at what time and by whom, planning future actions and evaluating past or ongoing actions;
- Ensuring appropriate resources and staffing;
- Reviewing the strategy in terms of sequence, priority and timing, as well as adaptation and revision within a realistic assessment of what can be achieved within the specified timeframe;
- Monitoring horizontal and vertical integration of the various agencies involved;
- Reporting on progress.

To quote the introduction of the UN Convention of Corruption, which Turkey has ratified, the two institutions should be ultimately responsible for monitoring the implementation of the strategy which is intended:

- To promote and strengthen measures to prevent and combat corruption more efficiently and effectively;

- To promote integrity, accountability and proper management of public affairs and public property.

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END NOTES

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[14] More information is included in the Background Review.

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