DEPARTMENT
of INTERNAL
COMPLAINTS

Whether public or private, organizations need some reliable system for filing and addressing complaints. Those with concerns about potential corruption need a way to bring them to the attention of responsible managers. If the managers themselves are the cause of the problem, there must be a mechanism for employees to file their complaints with a body which is both trusted and endowed with the powers to investigate the matter.

In the absence of reliable complaint mechanisms, honest managers can know comparatively little about what is taking place in their organization. Corrupt managers are free to act in the knowledge that they are safe from subordinates' scrutiny. Misunderstandings about managers' or employees' actions can persist and lower morale. A sound complaint mechanism can rectify all of these situations.

However, in many societies there is a reluctance to report the misbehavior of workplace colleagues. Such reporting is seen as being anti-social, as "spying" on neighbors and "denouncing" fellow citizens. But, in an increasing number of countries, the reverse is being recognized. Citizens are coming to understand that the interests of society are best served if people who are aware of serious misbehavior – such as corruption – speak up.

Although it may take some time for public attitudes to change, a reform program that emphasizes the importance of allowing state employees to file complaints enhances the ability of each employee to act as a corruption watchdog.[1]

INTERNAL COMPLAINT MECHANISMS

Each government department (and also, every private sector organization of any size) should have clearly defined procedures for filing internal complaints. Frequently, these procedures are misconceived. Usually, they are designed for individuals with a personal interest to pursue; the procedure is adversarial and the complainant is required to prove his or her case. For a more effective process, these mechanisms should allow employees to raise concerns with persons in authority, who are able to investigate.

WHISTLEBLOWING – PROVIDING SAFE CHANNELS FOR EMPLOYEES' COMPLAINTS

The important role employees can play in preventing scandals and disasters, and in keeping a check on malpractice, was recognized in the United Kingdom following a series of catastrophic events in the 1980s.

Almost every public inquiry into these events found that employees had known of the dangers before they materialized, but had either been too scared to sound the alarm or had raised the matter with the wrong people or in the wrong way. Among the examples were:

- *When a train crashed outside of London's busiest railway station killing 35 people in December 1988 the inquiry found that a supervisor had noticed the loose wiring that eventually caused the crash, but had said nothing for fear of upsetting his superiors.*

- *After the Bank of Credit and Commerce International collapsed in July 1991 the inquiry found an autocratic environment had existed within the bank that prevented staff from voicing any concerns about the bank's activities.*

- *The inquiry into the sinking of the Herald of Free Enterprise ferry at Zeebrugge, Belgium in March 1987 discovered that staff had warned on no less than five occasions that the ferries were sailing with their bow doors opened, but their concerns had been ignored.*

- *The 1996 inquiry into arms shipments to Iraq revealed that an employee had written to the British Foreign Office informing them that munitions equipment was being prepared for Iraq, but his letter had not been acted upon.*

Each of these scandals could have been avoided. The first people to notice any misconduct within an organization are likely to be those who work there. Yet often the prevailing culture within the workplace is one which itself deters employees from speaking up. Employees are well placed to sound the alarm

and act as whistleblowers. But they may also feel that they have the most to lose – their jobs and their workplace friends – through raising the alarm.[2] This is particularly true when a junior employee becomes aware of corrupt conduct by his or her superiors.

Such employees are faced with four options:

- *To remain silent*
- *To raise the concern through some internal procedure*
- *To raise the concern with an external body, such as a regulator*
- *To make a disclosure to the media*

Each of these options is to some degree unsatisfactory. Unless the culture in the workplace is one which allows employees to speak up without fear, each option might be seen to have adverse repercussions – either for the employer, the employee or the wider public (be they shareholders, taxpayers, passengers or consumers).

Faced with such uncomfortable choices, employees will often opt to turn a blind eye to questionable conduct, and keep silent. For the individual, this is the safest option. Yet the effect is that risks are not averted, dangers are not removed and corruption goes unchecked. A responsible employer is denied the opportunity to protect the organization's interests, and an unscrupulous competitor or manager may start to assume that all actions are tolerated.

TYPES OF COMPLAINT MECHANISMS

The law should provide for at least two types of institutions to which whistleblowers can report their suspicions or offer evidence. The first type should include entities within the organization itself, such as supervisors, heads of the organization or internal (or external) oversight bodies created specifically to deal with maladministration. If the whistleblower is a public servant, he or she should be able to report to bodies such as an ombudsman, an anti-corruption agency or a general auditor.

Whistleblowers should be able to turn to a second type of institution if their disclosures to these first bodies do not produce appropriate results, and, in particular, if the person or institution to which the information was disclosed:

- *Decided not to investigate*
- *Did not complete the investigation within a reasonable time*
- *Took no action regardless of the positive results of the investigation*
- *Did not report back to the whistleblower within a certain time*

Whistleblowers should also be given the possibility of being able to directly address these secondary institutions if they:

- *Have reason to believe that they would be victimized if they raise the matter internally or with a prescribed external body*
- *Reasonably fear a cover-up*

Members of the legislature, the government or the media could be among these secondary groups. Experience has shown that a whistleblower law, which provides legal protection for employees who speak out, by itself will not encourage people to come forward. In a survey carried out among public officials in New South Wales, Australia on the effectiveness of the protection offered by that country's 1992 Whistleblower Act, 85 percent of the interviewees were unsure about either the willingness or the desire of their employers to protect them if not of they shed light on problems of corruption or other issues. Fifty percent stated that a fear of reprisal would prompt them to refuse to make a disclosure.

In order to help the Whistleblower Act work, the Independent Commission Against Corruption New South Wales concluded that:

- *There must be a real commitment within the organization to act upon disclosures and to protect those making them*

- *An effective internal reporting system must be established and widely publicized within organizations.*

An employee who feels that something must be done is as likely to publicize the matter outside of an organization as within it. When there are no clear signals about which external disclosures are appropriate and in what circumstances, the employee who does decide to go outside is most likely to go to the media. This option is usually taken as a last resort and is certainly not the preferred choice of a loyal employee. Media disclosures tend to be made by staff, who are either disgruntled or genuinely feel there is no other way to ensure the matter is addressed without putting their own careers on the line.

Disclosures made to the media will almost invariably provoke a defensive response from the organization. If those in charge are unaware of the issue, their instinctive response will be to deny it. If told that there is evidence to back up the charge, they will be tempted to take a position which can best be characterized as "shooting the messenger." For example, the whistleblower may be frequently verbally abused and malicious stories circulated about him or her; or he or she can be portrayed as a bitter individual who cannot be trusted to tell the truth.

These events do little to inspire public confidence in the organizations concerned. Similarly, organizations that use a wall of silence to counter allegations also fail to reassure the public. Their silence is seen as a tacit admission of culpability.

If safe and acceptable ways can be provided to enable employees to bring up concerns with their employer, it is likely that malpractice will be deterred. It is also more likely that where malpractice does take place, it will be detected and stopped at an early stage – with the minimum of embarrassment to the organization. Some organizations ask their external auditors to audit the effectiveness of their complaints channels.

WHISTLEBLOWER LAWS

Accountability must accompany any attempt to encourage whistleblowing.

The United Kingdom's Public Interest Disclosure Act (PIDA) seeks to promote accountability and sound governance in organizations by reassuring employees that it is both safe and acceptable for them to raise genuine concerns about irregularities in the conduct of a business or other organization. It does this by providing full and immediate protection from dismissal or victimization to those employees who raise concerns in accordance with the law.[3]

PIDA applies to genuine concerns about crimes, civil offences (including negligence, breach of contract, breach of administrative law), miscarriages of justice, dangers to health, safety or the environment and the cover-up of any of these problems. It applies across the private, public and voluntary sectors and covers contractors, trainees, agency staff, home workers and every professional in the National Health Service (NHS). It does not at present cover the genuinely self-employed (other than in the NHS), volunteers, the intelligence services, the army or police officers.[4]

The fullest – and most readily available – protection under PIDA occurs when an employee raises a concern about irregularities within an organization or with the person who carries legal responsibility for correcting any problems. Here, a reasonable and genuine suspicion is sufficient to give the employee protection. The rationale behind this provision is that those in charge of the organization are best placed to investigate and put right any questionable practice[5]. This approach also furthers the principle of accountability. Should the concern subsequently prove to be well-founded, the law can more readily hold people to account for their actions when it can be shown they had actual knowledge or notice of the action.

However, the UK Act also sets out the circumstances in which a disclosure outside the organization may be protected. Under the Act, the government provides for certain regulatory bodies to also play a role in such disclosures. A disclosure to any of them is protected as long as the employee has a reasonable belief in the truth of the information and any allegation contained in it. In practical terms, the employee must have some good evidence to demonstrate the grounds for his or her belief– even if, in fact, that belief later turns out to be mistaken.

For wider disclosures – and this would include disclosures to the police, the media or to a member of parliament – the employee must satisfy a number of tests in order to gain protection. In order to receive protection, the employee must have raised the concern with his or her employer or the responsible regulator. Exceptions to this rule take place only if he or she reasonably feared victimization; if the matter is likely to be covered up and there is no named regulator to handle such a case; or if the matter is deemed exceptionally serious.

The legislation does not protect troublemakers. To be protected, the employee must be acting in good faith. The only instance when this requirement does not apply is when the employee makes a disclosure in the course of obtaining legal advice.

Such legislation can go a long way towards ensuring that employees do not simply ignore legal violations in the workplace, but feel reassured that they can safely raise a concern with their employer. Employers who attempt to silence such concerns can be ordered to pay damages in case of prosecution.

Similar legislation exists in Australia at both the federal and state level.[6]

FALSE ALLEGATIONS

Individuals' rights and reputations must be protected against frivolous, vexatious and malicious allegations. The dreaded phenomenon of the "informer" in authoritarian states underscores this danger. Whistleblower legislation should therefore include clear rules to restore damage caused by false allegations.

In particular, the law should contain minimum measures to restore a damaged reputation. Such measures could include the publication of apologies and the correction of personnel files, among other items. Criminal codes normally do contain provisions which penalize those who knowingly come forward with false allegations. It should be made clear to whistleblowers that these rules can apply to them, as well, if their allegations are not made in good faith.

TELEPHONE HOTLINES

When the Czech government set up its first anti-corruption hotline at the ministry of the interior (focused on combating corruption in the police force), many people wondered how deep the average citizen would trust a phone line manned by state employees.[7]

In the Czech Republic, at least, it appears that non-governmental organizations enjoy a greater level of trust – and a greater expectation that they will act on received complaints. This suggests that non-governmental organizations can be well placed to operate services which can give citizens a voice by ringing a hotline – anonymously or otherwise – and voicing their concerns.

When NGOs have this degree of involvement in combating corruption, it is important that:

- *The role of the hotline centers and the identity of callers who would rely on its services should be carefully defined.*
- *The hotlines are introduced as part of a larger strategy.*
- *The phone lines do not collapse under excessive caller response.*
- *There is a well-focused advertising campaign which explains the purpose of the service and who is operating it.*
- *The security of the phone lines from eavesdropping of any nature is not in question.*
- *A clear decision is made as to whether or not anonymous complaints will be accepted.*
- *Clear guidelines are given for use of the hotline.*
- *The hotline employs experienced and trained operators, who can explain to callers what their rights are and can propose basic solutions for their problems.*
- *Feed back about how the complaint was handled is given to callers who identify themselves.*

All this is not to suggest that government departments should never run hotlines. There are departments in various countries – including police, tax, and customs – which run such hotlines satisfactorily. However, when public trust in a government is not high, a government organization can join forces with a respected NGO which enjoys public trust. Together, the two can provide the hotline service on behalf of the government department. For those with concerns about corruption in World Bank projects, the World Bank itself runs a hotline service, with free telephone contacts in a large number of countries.[8]

Two types of anti-corruption hotlines operate in Ukraine. The government hotline allows employees to phone in complaints concerning tax offices. Unfortunately, however, the hotlines have not yet gained public trust; in part, because they are run by the government. A hotline established by the civil society organization, the Citizen's Advocacy Office, receives greater use. This hotline receives calls 24 hours a day and is answered either by an operator or an answering machine. Anonymous complaints are documented and when a pattern of such calls emerges, suitable action is initiated.

A WIDER ROLE FOR CIVIL SOCIETY

In several countries there are NGOs which provide help, advice and counseling to whistleblowers. Concerned employees are encouraged to contact the NGOs so that they will go about raising their concerns in the proper fashion and to ensure that they appreciate the full ramifications of their intended actions. Some also provide expert advice on internal complaints systems to both the public and the private sector, and can serve as an official channel for complaints.

A United Kingdom NGO, Public Concern At Work (PCAW), was actually responsible for having the legislation enacted, and now works with all involved parties (employers, unions and regulators) to ensure that the legislation functions as it should. It also works in the community to show how individual action can inform and influence the public interest, and to promote whistleblowing not just as a private right, but as a public good based on consideration for others.[9] PCAW has been co-operating with a similar NGO in South Africa, the Open Democracy Advice Centre.[10]

In the United States, the Government Accountability Project (GAP) is the country's leading whistleblower organization. It also promotes government and corporate accountability by advocating occupational free speech, litigating whistleblower cases, publicizing whistleblower concerns, developing policy and the reform of whistleblower laws.[11]

THE OFFICE OF THE OMBUDSMAN

What can the ordinary citizen do when things go wrong? When grievances occur, and complaints about government bureaucracy fall on deaf ears? One option is to turn to the legal system. But even when a country's legal system operates in accordance with the law, courts tend to be slow, expensive and far from user-friendly. In addition to this, the courts may themselves be corrupt and their respect of the rule of law problematic.

In these situations, citizens need to be able to turn to an ombudsman.[12] In Spain, the ombudsman carries the title "Defender of the People;" in South Africa, "Public Protector." Friendly in style and informal in practice, the office of the ombudsman can be an ideal partner for civil society organizations that work in handling complaints and in educating the public as to their rights. This is the case especially in those countries where the introduction of an ombudsman was preceded by informal public mediators, who helped bridge the divide between citizens and municipal authorities. In Catalunia, Spain, the law itself introduced local ombudsmen who are independent from the national Defender of the People.

The concept of a public ombudsman originated in China over 2,000 years ago, and came to Scandinavia by way of Turkey. The Scandinavians shaped the office into its contemporary form. In recent years, many countries have adopted the concept, finding it to be useful for citizens when they are dealing with the powerful engines of authority. In 1962, New Zealand became the first country outside of Scandinavia to adopt the office. Norway also adopted the office in that year.[13]

Although historically the office has focused on malfeasance in public administration, in recent years a number of countries have expanded this traditional mandate to include human rights abuse as well as corruption. Ombudsmen have been established in many of the transition countries, and under various guises: The Parliamentary Civil Rights Commissioner in Hungary; the Defender of Civil Rights in Slovenia; the Human Rights Commissioner in Russia; the National Office for Human Rights in Latvia; and the Public Advocate in both Georgia and Romania.[14]

Lithuania, by its constitution and subsequent legislation, has a council of five parliamentary ombudsmen whose primary responsibility is to investigate petitions related to abuse of power and bureaucracy. Two ombudsmen investigate civil servants; one of them, military officers; the remaining two, local government officials.

To be effective, the office of ombudsman should fulfil four criteria:

- *The ombudsman is independent from organizations which he or she has the power to investigate.*
- *Its actions make a difference in building public trust in government. Recommendations made by the ombudsman should be generally acted upon.*
- *It exhibits fairness.*
- *It is publicly accountable.*

The ombudsman independently receives and investigates allegations of maladministration. It does not compete with the courts, or act as a further body to which those unsuccessful in the courts can appeal. Most do not have jurisdiction to investigate the courts themselves.

Definitions of the role of ombudsman can vary. Pakistan's legislation establishes the office's primary function as to examine:

(i) *A decision, process, recommendation, act of omission or commission which is contrary to law, rules or regulations, or is a departure from established practice or procedure, unless it is bona fide and has valid reason; is perverse, arbitrary or unreasonable, unjust, biased, oppressive or discriminatory; based on irrelevant grounds; or, involves the exercise of powers or the failure or refusal to do so for reasons of corrupt or improper motives such as bribery, jobbery, favouritism, nepotism, and administrative excesses; and*

(ii) *Neglect, inattention, delay, incompetence, inefficiency and ineptitude in the administration or discharge of duties and responsibilities.*[15]

In essence, as a landmark Canadian court case found "[t]he Ombudsman can bring the lamp of scrutiny to otherwise dark places even over the resistance of those who would draw the blinds".[16]

The institution of ombudsman gives individuals an opportunity to place complaints about the practices of government before an independent and expert body. Complaints may result in remedial action being taken to resolve issues of concern in particular cases, and, in a broader context, help to restore confidence in the integrity of government institutions.

As a generally high-profile constitutional institution, the office is potentially better able to resist improper pressure from a government's executive branch, than are other institutions such as a public service commission, a police commission or a defense commission. It can perform audits which result in information that can reveal corruption within a government. Thus, it is able to contain corruption.

The confidentiality of these procedures gives the office the added advantage of providing a shield against possible intimidation of informants and complainants.

In many countries, the mandate of the ombudsman also extends to investigation and inspection of systems of administration to ensure that they restrict corruption to a minimum. It can recommend improvements for procedures and practices and act as an incentive for public officials to keep their files in order at all times.

The office has also been found to be extremely adaptable, and has worked well in parliamentary

democracies, societies with radically different ethnic and religious backgrounds, and in one-party as well as military states.

Poland created its office of ombudsman in 1987 to investigate government of the law and principles of community life and social justice. Its success has inspired other emerging European democracies to do the same.[17] However, although a number of transition countries have established an office of ombudsman, the selection processes – although appropriate on paper – have not always provided the right calibre of person to undertake the role. Nor have the offices generally been given adequate resources.

THE OMBUDSMAN IN POLAND

In Poland, the office has proven to be popular. The creation of an ombudsman in 1987 was one of the first democratic institutions to be created in Poland. The Commissioner for the Protection of Civil Rights is elected by the lower house of parliament and appointed with the senate's approval for a single term of five years. Everyone, including foreigners, has the right to apply to the commissioner for help in defending any rights or liberties believed to have been violated by public bodies. Access to the ombudsman is free, without formalities, and the commissioner is also empowered to act on his or her own initiative.[18]

The commissioner must be a Polish citizen of high public standing, be politically and ideologically neutral and have a good knowledge of law. The office-holder cannot hold any other positions.

WHAT CRITERIA DOES AN OMBUDSMAN APPLY WHEN JUDGING OFFICIAL ACTIONS?

When is conduct proper or improper? If a particular government action conflicts with statutes and principles, and does not appear to be justified on other grounds, it cannot, in principle, be regarded as proper conduct. Ideally, an ombudsman approaches the action broadly and reviews it both in the light of the provisions of the written law, and in the light of unwritten legal principles, as well as against standards for good governance. These include the principles of:

- *Equal treatment for equal cases*
- *Reasonableness*
- *Proportionality between the means and the result when judging official actions*
- *Legal certainty of a citizen's expectations that he or she would acquire a right when he or she has acted in good faith on that expectation*
- *Provision of reasons for decisions*
- *Protection of a citizen against official actions which have n unjustifiably negative impact on him or her*

In addition, when reviewing a government action, an ombudsman also uses standards or guidelines for good governance which contribute to the propriety with which the executive branch acts.

These guidelines are manifested in certain accepted standards for administrative processes and the conduct of public servants toward the public. They include the requirement to act without undue delay; to supply the individual with relevant information; to treat people fairly and respectfully; and to be unbiased and helpful.

Finally, the ombudsman sets standards for the government organization related to co-ordination between ministries and agencies supplying a service. It monitors progress in meeting standards for delivery of services as well as relevant professional standards. It protects an individual's privacy, and public access to government authorities.

SHOULD AN OMBUDSMAN HAVE A DISTINCT ANTI-CORRUPTION ROLE?

A classic ombudsman is concerned with eliminating maladministration; in other words, bad management of public affairs. Generally, maladministration can stem from a degree of corruption in public administration. Therefore, an ombudsman will need

to tackle corruption when it is the cause of malfunction in the administration. The question is how the ombudsman should do this.

In order to perform the function of improving public administration, the ombudsman needs to develop a relationship of trust and confidence among those whose standards he or she is responsible for overseeing. It is generally thought inadvisable – if it can be avoided – for the ombudsman to have an investigative and prosecutorial role. Such a role converts the "friendly ombudsman" into the "feared policeman", and could, in some environments, render the wider functions of the office less effective.

However, several countries have taken the view that the ombudsman, given his or her right of access to government files, is in a far better position to investigate and police a government administration than are less expert and orthodox police investigators.[19]

AN OMBUDSMAN'S ROLE IN MONITORING FINANCIAL STATEMENTS

Papua New Guinea and Taiwan are two countries where the ombudsman can review and monitor declarations of income and assets made by senior public officials.[20] As an office independent of government, with the investigative capacities to examine the contents of financial declarations, the ombudsman's office can avoid the necessity for establishing other independent mechanisms specifically for monitoring financial assets.[21] Alternatively, when a large number of applications for information are likely to be disputed, a local government ombudsman's office ombudsman's office can be created to handle these requests.[22]

THE APPOINTMENT PROCESS

As with many other elements in a system of checks and balances on government, the process of appointing an ombudsman is crucial to building and sustaining public confidence in the institution. If the office is filled with political partisans or retired officials, chances of success are severely limited. In some countries, the legislature itself makes the selection and the head of state formally announces the appointment. In others, the head of state makes the appointment after consultation with the leader of the opposition and the prime minister (if there is one). In some cases, the appointment is simply made by the executive branch without any formal requirement for consultation.

The actual mechanics of the process are secondary to the outcome. The office must be seen by the public to be independent, fair, competent, and serving the best interests of the people; not as a bureaucratic appendage, serving the objectives of the ruling political party.

One distinguished ombudsman has noted that:

However the appointments procedure may be set up, the institutional safeguards for independence will be undermined if there is any possibility of party political considerations leading to bias – or the appearance of bias – in the person appointed. It is equally important to guard against making an appointment that waives or dilutes the necessary professional qualifications. In this respect, all that can be done, once a sound selection procedure is enshrined in the law, is to hope that the responsible authority will act wisely. The Ombudsman himself, of course, must endeavour to steer clear of any conduct that could undermine his impartiality or public confidence in him in this regard. He must never use his Office to pursue his own personal interests, for instance in connection with his future career.[23]

THE COURTS AS A COMPLAINT MECHANISM

In simple terms, the rule of law requires that government operate within the confines of the law. Aggrieved citizens, whose interests have been adversely affected, have the right to approach an independent court to decide whether or not a particular action taken by, or on behalf of, the state is in accordance with the law. This right can appear in a country's constitution or be conferred by legislation. Some countries have specialist administrative courts for this purpose; others give jurisdiction to the ordinary courts.[24]

In this context, the courts examine a particular decision made by an official, or an official body, to deter-

mine whether it falls under the authority conferred by law on the decision-maker.[24]

In other words, the courts rule as to whether or not the decision is legally valid. In doing so, the judges do not substitute their own discretion and judgment for that of the government. They simply rule whether the government or its officials have acted within the limits of their lawful authority. Thus, the judges do not govern the country and, do not "displace" the government when government decisions are challenged in the courts.

As the role of the private sector increases in many countries, and the emphasis of government shifts more heavily toward regulation, the role of the courts is, if anything, becoming even more important. As public functions are privatized, the courts, rather than parliaments, begin to take the lead role in enforcing accountability.

The decisions of government regulators impact directly on the private sector interests that they are regulating, and the private sector will look to the courts with greater frequency to shield it from excessive or abusive use of regulatory powers. At times, the courts will be expected to go further, and actually review the legality of decisions being made in the private sector itself. They will be expected to apply the principles of administrative law (previously applicable only to official institutions), when these decisions impact significantly on the public interest.

The 1996 Constitution of South Africa goes so far as to make "just administrative action" a constitutionally protected right:

33.

(1) Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.
(2) Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.
(3) National legislation must be enacted to give effect to these rights, and must:
a. Provide for the review of administrative action by a court or, where appropriate, an independent and impartial tribunal;
b. Impose a duty on the state to give effect to the rights in subsections (1) and (2); and
c. Promote an efficient administration.

South Africa's Promotion of Administrative Justice Act 20 establishes the right to administrative action that is "lawful, reasonable and procedurally fair" and to the right to written reasons for administrative action as contemplated in the constitution.

Section 6(1) and (2) provide:

1) Any person may institute proceedings in a court or a tribunal for the judicial review of an administrative action.
2) A court or tribunal has the power to judicially review an administrative action if
a) The administrator who took it
i) was not authorised to do so by the empowering provision;
ii) acted under a delegation of power which was not authorised by the empowering provision; or
iii) was biased or reasonably suspected of bias;
b) A mandatory and material procedure or condition prescribed by an empowering provision was not complied with;
c) The action was procedurally unfair;
d) The action was materially influenced by an error of law;
e) The action was taken-
i) for a reason not authorised by the empowering provision;
ii) for an ulterior purpose or motive;
iii) because irrelevant considerations were taken into account or relevant considerations were not considered;
iv) because of the unauthorised or unwarranted dictates of another person or body;
v) in bad faith; or
vi) arbitrarily or capriciously;
f) The action itself-
i) contravenes a law or is not authorised by the empowering provision; or
ii) is not rationally connected to:
aa) the purpose for which it was taken;
bb) the purpose of the empowering provision;
cc) the information before the administrator; or
dd) the reasons given for it by the administrator;
g) the action concerned consists of a failure to take a decision;

h) the exercise of the power or the performance of the function authorised by the empowering provision, in pursuance of which the administrative action was purportedly taken, is so unreasonable that no reasonable person could have so exercised the power or performed the function; or

i) the action is otherwise unconstitutional or unlawful.

THE WAY FORWARD

No society can expect to tackle corruption effectively if its citizens have neither the will nor the ability to raise their complaints when they witness acts of corruption. Just as they play a vital role within the private sector, reliable and safe complaint mechanisms lie at the heart of any government strategy to fight corruption.

ENDNOTES

1. Examples of legislation include 1994 Whistleblowers Protection Act (Queensland, Australia); 1998 Public Interest Disclosure Act (United Kingdom); Whistleblower Reinforcement Act of 1998 (District of Columbia, United States of America) and District of Columbia Government Comprehensive Merit Personnel Act of 1978 (United States)

2 The expression "whistleblower" (as by a referee in a football match) is of US origin. The Dutch equivalent is "bell ringer" (a person who rings a bell to raise an alarm). Discussions of whistleblowing raise debates in the countries of Eastern and Central Europe, when discussants confuse the legitimacy of the actions with the less respectable actions of those who denounced their neighbors under former totalitarian regimes.

3 The (UK) Public Interest Disclosure Act 1998 came into force in 1999. The text is at www.hmso.gov.uk/acts/acts1998/19980023.htm.

4 The UK government has promised that police officers will receive protection equivalent to that available under the Act.

5 Applying this approach to the principle of parliamentary accountability, the Act provides similar strong protection where people in public bodies raise matters directly with the sponsoring government department.

6 1999 Queensland Whistleblowers Protection Regulation (http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/W/WhistleblowProR99_01_.pdf); The Australian Law Reform Commission has come out strongly in favor of whistleblower protection. See: Scope of Complaints System at http://www.austlii.edu.au/au/other/alrc/publications/reports/82/ALRC82Scopeofcomplaintssys.html#Ch14ProtectionandencouragementofwhistleWhistleblowers Australia, Inc. is an NGO which provides support for those who have witnessed corruption or suspect its presence in their place of work. See: http://www.whistleblowers.org.au/.

7 This discussion draws from a Transparency International-Czech Republic round-table entitled Work of Contact Centres for Corruption Victims and Anti-Corruption Hotlines held in Prague, Czech Republic, on November 2, 1999.

8 Details of the contact numbers are at the World Bank's web site: http://www.worldbank.org.

9 Public Concern at Work: http://www.whistleblowing.org.uk.

10 Open Democracy Advice Centre (South Africa): http://www.opendemocracy.org.za

11 Government Accountability Project (US): http://www.whistleblower.org

12 John Hatchard, "The Office of the Ombudsman", in National Human Rights Institutions in the Commonwealth, Commonwealth Secretariat, London (1992)

13 The New Zealand legislation may be accessed at http://www.ombudsmen.govt.nz/ombudsme.htm. For the Office of the Ombudsman of New Zealand, see: http://www.ombudsmen.govt.nz/

14 See the report Possibilities for the Creation of a Ombudsman Institution in the Republic of Bulgaria done by the Center for the Study of Democracy, National Anti-Corruption Documents: http://64.49.225.236/russian/ni_National_Docs_ru.htm

15 The definition comes from the Pakistan legislation establishing the office.

16 The quotation comes from a landmark Canadian court case. For further information contact Jeremy Pope at jeremy.pope@tiri.org

17 Using an Ombudsman to Oversee Public Officials, Nick Manning and D. J. Galligan (PREM Notes, The World Bank, Washington DC 1999). For further information contact Jeremy Pope at jeremy.pope@tiri.org

18 The Commissioner's mandate is set out in Poland's report to the UN Human Rights Commission, October 2003: http://www.unhchr.ch/tbs/doc.nsf/0/a6e8802acbd8d5b4802567a80053e0d4?Opendocument

19 For example, the Office of the Inspector-General of Government in Uganda

20 Finland is an example.

21 Address by Dr Marten Oosting, president of the International Ombudsman Institute, National Ombudsman for the Netherlands, in the 1998 "The Independent Ombudsman in a Democracy Governed by the Rule of Law" given at the Opening Ceremony of the Third Asian Ombudsman Conference, Macau, May 4, 1998.

22 The Papua New Guinea model is widely seen as having had positive impact. However, in Taiwan, in order to cope with the implementation of the asset disclosure law, the Control Yuan, an agency that monitors government, set up the Department of Asset Disclosure for Public Functionaries in August 1993.

23 Declarations of assets are discussed in Chapter 3.

24 For a more general discussion of the courts, see Chapter 16.

25 For the complete text of The Promotion of Administrative Justice Act, see: http://www.acts.co.za/prom_admin_justice/Index.htm Also, Jeffrey Jowell, Andrew Le Sueur, Woolf Judicial Review of Administrative Action, 5th edition: Sweet & Maxwell (UK) SBN: 0-421-60790-4 (Soft cover).