



**The fish's head:**  
Appointment and removal procedures for  
anti-corruption agency leadership

Sofie Arjon Schütte

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## Abstract

“A fish rots from the head” is the saying when an organisation’s leadership is seen as responsible for the unethical behaviour of its personnel. Undue external interference with an anti-corruption agency (ACA) is likely to target its top officials; if co-opted or corrupted, they can do serious damage to the effectiveness and reputation of an ACA. Appointment and removal processes affect the actual and perceived impartiality of ACAs. If an ACA head can be appointed and removed at will by a political stakeholder, the appointee has an incentive to defer to the will of the appointer. Some countries have therefore made such appointments the shared responsibility of several institutions to avoid potential misuse of the ACA by the government or a particular political group. In addition to who has responsibility for appointments, the criteria for eligibility and the transparency of the selection criteria and process also matter. The inclusion or exclusion of a certain group of candidates can have an effect on the actual and perceived impartiality, competence, and responsiveness of the head of the agency. The inclusion of non-state actors, for example, is likely to gain more public trust than limiting candidates to party office holders.

Removal procedures can be as important as appointment procedures. Security of tenure needs to be weighed against accountability. The implicit or explicit threat of removal can be a powerful incentive for the ACA head to align with specific interests. Removal procedures become important when those whose interests are threatened try to influence and – if unsuccessful – remove key decision makers. Removal, however, can also be needed to replace leaders who are corrupt, politically driven, or simply incompetent. It is therefore important to outline clearly the removal procedures, keeping in mind both the independence of the agency and the accountability of top officials.

## Acknowledgements

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Some of the legislation that provided the basis for analysis in this paper has already been amended or replaced, and more changes will naturally come in the future. As my research on this topic does not conclude with this paper, I would be immensely grateful to be alerted to changes in these laws and to the existence of other relevant legislation. And I am always interested in reading accounts of the actual implementation of appointment and removal procedures.

*A fish rots from the head.*

– Proverb

## 1. Introduction

Since the 1990s more than 30 countries have established new anti-corruption agencies (Recanatini 2011). Most of these agencies have been set up in developing countries, and many have received considerable financial support and technical assistance from donors. Anti-corruption agencies (ACAs) are often the key counterparts for donor agencies engaged in anti-corruption and governance programmes.

Nevertheless, there is widespread scepticism regarding the effectiveness of ACAs. It is therefore critical to identify factors that can support or undermine their effectiveness, beyond the obvious need for adequate human, financial, and technical resources, as required by any agency. Comparative studies on specialised ACAs stress the importance of independence, or political and operational autonomy, particularly when the agency has investigative tasks (e.g., De Sousa 2010; Doig, Watt, and Williams 2005; Heilbrunn 2004; OECD 2008; UNDP 2005; Recanatini 2011; Kuris 2014). Particular attention has been paid to accountability and reporting arrangements, which are clearly very important once an agency head is in place.

Processes for appointment and removal of an ACA's leadership can also have a critical impact on the operational autonomy of the agency. The relevance of these processes is generally acknowledged, but the mechanisms have not been examined in depth. In many cases the leadership consists of one individual, who bears ultimate responsibility; in other cases the responsibility for leading the agency is shared among several people (Box 1). Leadership positions can have different titles, most commonly president, chair, commissioner, director general, and board member. These positions are referred to in this paper using the specific titles in the respective country legislation, or more generally as "head," "leader," or "leadership."

Recanatini (2011, 551) notes, "The first factor that can contribute to independence is the selection of the ACA leadership, which should have the technical capacity and integrity to carry out the agency's mission. Without clear standards for appointment and removal, the head of the agency can be intimidated or at least limited to a far narrower scope than the ACA's legal authority would warrant."

This paper starts from the premise that appointment and removal processes do matter for the independence and therefore the effectiveness of ACAs. Other factors, of course, also affect an organisation's autonomy. After all, most ACAs have been established in the face of ineffective or even corrupt existing law enforcement agencies under the government. But unbiased investigations, including of possible corruption in an incumbent government, are only possible when the head of the ACA is protected from political interference. Therefore the analysis focuses not on *whether* but on *how* appointment and removal processes can affect independence and effectiveness.

Furthermore, the head of an ACA is its public face – to use another body metaphor – and can strongly influence public perception of the agency. Michael Johnston (2011, 24) emphasises the particular importance of public trust in "fragile situations": where an ACA "can be headed and directed by a figure or leadership group enjoying significant social trust, such Commissions can be effective." In a 2005 comparative study of institutional arrangements to combat corruption, the United Nations Development Programme (UNDP) observes that "the public credibility of a commission or agency will depend largely on whether the public perceives that its members have integrity, are competent,

and that all relevant interests in society are represented” (2005, 5 n. 4). The UNDP report further suggests that “another way to enhance the autonomy of the ACA is to ensure that the selection and appointment of the executive(s) of the ACA is a shared responsibility of several institutions” (5). The report, however, does not provide much information on how such a mechanism for shared selection and appointment could work.

The principles of separation of powers and judicial independence, of course, have a long tradition and are the subject of a large body of research, much of which is relevant to ACAs. Siri Gloppen (2014, 75–76) has summarised relevant recommendations from this literature:

Increase the number of actors (veto-players) involved in the selection process; establish clear criteria; and increase the transparency of the process. Following these principles, most countries now have a (more or less) independent body – a judicial council or judicial service commission – tasked with vetting and nominating candidates for judicial offices. Their composition varies, some consist mainly of representatives from within the legal profession, others have a majority of politicians or are appointed by the executive, yet others have representation from civil society. The understanding is that to reduce executive influence, political appointees should not be in majority. Equally important is how the process is conducted and the degree of transparency. With vetting and nominations behind closed doors (sometimes not even the final list is public), the scope for executive influence is significant. More transparent processes, with open calls for nominations/applications, open hearings, public interviews of candidates, and open ranking lists, reduce the scope for undue executive influence.

The judiciary is a key point of reference for a recent initiative to outline principles for the independence of ACAs. In November 2012, current and former heads of ACAs as well as anti-corruption practitioners and experts came together for discussions and issued the Jakarta Statement on Principles for Anti-Corruption Agencies. It recommends that ACA heads “shall be appointed through a process that ensures [their] apolitical stance, impartiality, neutrality, integrity and competence” and that they “shall have security of tenure and shall be removed only through a legally established procedure equivalent to the procedure for the removal of a key independent authority specially protected by law (such as the Chief Justice).”

There are important differences between judicial and ACA appointments, of course, with the function of ACAs being overwhelmingly executive in nature (although prosecution is part of the judiciary in some jurisdictions). Judiciaries are usually recruited from a small pool of legal professionals. Eligibility criteria are often broader for heads of ACAs, at least when it comes to their professional background, although some ACAs require that eligible candidates also have the required qualifications for appointment as a judge. This paper will therefore examine not only who appoints the most senior decision makers of ACAs, but also the criteria for eligibility, the transparency of the selection process (to the degree this is regulated by law), and the appointed leaders’ security of tenure.

This paper begins by categorising the most common types of appointment procedures, with particular attention to the different stakeholders involved in the selection and their roles. It distinguishes between single-branch and multi-branch (shared) appointment processes, further subdividing the shared category into simultaneous, sequential, and mixed processes. The paper then discusses common selection criteria, such as age, nationality, residence, professional experience, political affiliation, and public office, and considers how these may interact with the overall process. The final section examines security of tenure and the principal types of removal procedures, focusing on which stakeholders are required to be involved in removal and what kinds of behaviour can lead to removal

from office. Each section ends with a summary of important factors and questions to be considered by legislators, governments, ACAs, donors, and other observers in the assessment of ACA legislation. With respect to the role of donors in particular, the conclusion recommends a cautious role in supporting the independence of their ACA counterparts.

## 1.1 Research methods

This analysis is based on a review of legislation, drawing also on media reports and case studies of how this legislation has played out in practice. Appointment and removal procedures are stipulated most often in the same laws that establish the ACAs, or, less frequently, in a constitution. The focus is on the sections of legislation that expressly regulate appointment procedures, eligibility criteria, tenure, and removal of the top leadership of ACAs, whether this leadership consists of a single individual or a set of individuals.

Legislation covering 46 active ACAs in 44 countries was collected and analysed. This set was selected from an initial list of approximately 65 ACAs included in a World Bank–sponsored survey database available online through the Anti-Corruption Authorities (ACAs) Portal ([www.acauthorities.org](http://www.acauthorities.org)). ACAs with an investigative function were prioritised over those with only a preventive mandate. This is because independence from outside interference is particularly important for unbiased investigations, and repressive action (with the possibility of loss of personal freedom) is often considered a more direct threat to corrupt interests than preventive action. In addition, stand-alone ACAs were prioritised over specialised units in existing institutions, such as the public prosecution services. Anti-corruption units in existing law enforcement institutions are by definition not as independent as stand-alone agencies, although they may be led by outstanding individuals with high integrity and a desire to ensure the independence of their operations.

Two exceptions to these guidelines were made: the Austrian Federal Bureau of Anti-Corruption (BAK), which is part of government, and the Slovenian Commission for the Prevention of Corruption (KPK), which has only a preventive mandate. The former was included because Austria is one of the few Western European countries with a dedicated anti-corruption agency. The latter was chosen because the KPK in Slovenia was in a conflict with government for years and serves to illustrate how a process that does not work satisfactorily can be changed.

Three regional ACAs were included: the Independent Commission Against Corruption (ICAC) in New South Wales, Australia; the Corruption and Crime Commission (CCC) in Western Australia; and Karnataka Lokayukta in India. For a full list of the 46 agencies and relevant legislation included in the analysis, see Annex 1.

## 2. Who has the power to select and appoint?

Appointment processes for ACA leaders can be examined from different angles. When it comes to the relationship between appointment processes and independence, the most relevant question is “Who has the power to select and appoint?” Those who can appoint someone to office wield power, and they can select candidates whom they deem supportive of their own agenda. In an ideal world, this agenda would be to reduce corruption impartially. But those with the authority to appoint may be entangled in corruption themselves, or trying to use the ACA to undermine their personal or political opponents, or both. In analysing which stakeholders have power to appoint, it makes sense to first distinguish between the generally recognised branches of the state: the executive, the legislature, and the judiciary. Appointments may be made by a single branch, such as the prime minister (executive);

in some countries this process must also involve consultation with or confirmation by another branch. Shared appointments involve several branches of the state and possibly also civil society representatives in a simultaneous or sequential manner, or a mixture of the two (Table 1).

**Table 1. – Who has selection power in the appointment process?**

Single branch	Shared across branches
<p><b>Direct appointment</b></p> <p>CPIB (Singapore): president appoints director</p> <p>ICAC (Hong Kong): chief executive nominates commissioner and reports nomination to Central People's Government</p> <p>MACC (Malaysia): king appoints chief commissioner upon advice from prime ministers</p> <p>CNLCSE (Togo): president appoints 7 commissioners upon recommendation of the ministers</p> <p>PCCB (Tanzania): president appoints director general</p> <p>ACC (Swaziland): king appoints commissioner upon advice from Civil Service Commission</p> <p>EFCC (Nigeria): president appoints chairman and members of commission (other than ex officio members)</p> <p>NAC (Moldova): president appoints director upon proposal of prime minister</p> <p>ACA (Kosovo): Assembly selects director from among 2 candidates submitted by ACA</p> <p>ACC (Jordan): chair and 6 members appointed by royal decree upon recommendation of prime minister</p> <p>ULCC (Haiti): president appoints director general upon advice from ministers</p> <p>CONAC (Cameroon): president appoints commissioner</p> <p>DCEC (Botswana): president appoints director</p> <p>OA (Argentina): president appoints secretary on proposal of minister of justice and human rights</p> <p>HOO (Afghanistan): president appoints director general</p> <p>OFNAC (Senegal): 12 members appointed by decree</p> <p>CIABC (Sri Lanka): president appoints 3 commissioners upon recommendation of Constitutional Council</p>	<p><b>Sequential</b></p> <p>KPK (Indonesia): Parliament selects commissioners after multi-stakeholder selection committee prepares shortlist and submits it through president</p> <p>SNACC (Yemen): president appoints 11 members of Board of Trustees after Congress holds confidential vote on shortlist of 30 candidates prepared by Shura Council</p> <p>Ombudsman (Philippines): president appoints ombudsman from shortlist prepared by Judicial and Bar Council</p> <p>ACC (Maldives): People's Majlis selects 5 commissioners from shortlist suggested by president</p> <p>EACC (Kenya): multi-stakeholder selection panel submits shortlist to president, who selects chairperson to be approved (or vetoed) by National Assembly</p> <p>BIANCO (Madagascar): president selects and appoints director from among 3 candidates suggested by Conseil Supérieur de Lutte Contre la Corruption, which consists of 12 members representing the pillars of the integrity system (assumed to not all be part of government)*</p> <p>OAC (Catalonia, Spain): Parliament selects director (after a screening) upon proposal of the government</p> <p>KPK (Slovenia): president appoints chair and deputies from a shortlist prepared by committee of 5 members appointed from the government, National Assembly, anti-corruption NGOs, Judicial Council, and Officials' Council</p>
<p><b>Consultation with another branch or the political opposition required</b></p> <p>NAB (Pakistan): president appoints chair in consultation with chief justice</p> <p>CCC (Western Australia): governor appoints commissioner upon recommendation of premier in consultation with leader of opposition</p> <p>Karnataka Lokayukta (India): governor appoints lokayukta upon advice from chief minister in consultation with other branches (including opposition)</p>	<p><b>Simultaneous</b></p> <p>ACC (Myanmar): president, upper house speaker, and lower house speaker nominate 5 members each; president determines chair and secretary; both houses ratify</p>

<p>ICAC (Mauritius): prime minister appoints director general after consultation with leader of the opposition</p> <p>KNAB (Latvia): cabinet holds hearings on applicants; National Security Council, prosecutor general, director of Constitution Protection Bureau, and chief justice evaluate finalists within 10 days; then prime minister appoints director</p> <p>CIAA (Nepal): prime minister appoints commissioners upon recommendation of Constitutional Council</p> <p>BAK (Austria): minister of interior appoints director after consultation with presidents of Constitutional Court, Administrative Court, and Supreme Court</p>	
<p><b>Confirmation or ratification by another branch required</b></p> <p>ICAC (New South Wales, Australia): prime minister appoints commissioner; Joint Committee from Parliament can veto</p> <p>SSACC (South Sudan): president appoints chairperson, subject to approval by a simple majority in Assembly</p> <p>ACC (Sierra Leone): president appoints commissioner, subject to approval by Parliament</p> <p>FEACC (Ethiopia): Parliament appoints commissioners upon nomination by president</p> <p>IAAC (Mongolia): Great Assembly appoints head upon nomination by president</p> <p>ACC (Namibia): National Assembly appoints director upon nomination by president</p> <p>ACB (Malawi): president appoints director, subject to confirmation by Public Appointments Committee of Parliament</p> <p>Ombudsman (Rwanda): president appoints ombudsman after candidate is suggested by Cabinet and approved by Senate</p> <p>ACC (Zambia): president appoints director general, subject to ratification by Parliament, on such terms and conditions as president may determine</p>	<p><b>Mixed</b></p> <p>NCCC (Thailand): selection committee, consisting of presidents of Supreme Court, Administrative Court, House of Representatives, and another independent organ, nominate candidates by open voting and submit to president of Senate; Senate approves or rejects by secret ballot; king appoints commission members</p> <p>ACC (Bhutan): king appoints chairperson from a list of names compiled jointly by prime minister, chief justice, speaker, National Council, and leader of opposition</p> <p>CVC (India): president appoints commissioners upon recommendation of a committee consisting of prime minister, minister of home affairs, and leader of opposition in House of the People</p>

*Note:* The full names of all the country anti-corruption agencies are listed in Annex 1.

\* In late 2014, the Conseil Supérieur de Lutte Contre la Corruption was replaced by the Comité pour la Sauvegarde de l'Intégrité (CSI). To appoint a new director, the Bureau Indépendant Anti-Corruption (BIANCO) has to establish a recruitment committee consisting of one representative each from BIANCO, CSI, the judiciary, media, police, gendarmerie, and academia. After a call for applications, interviews, and a background check, the names of three candidates are suggested to the president.

## 2.1 Single-branch appointments

The most straightforward single-branch appointment process is for the president or prime minister to directly select and appoint the head of the agency (Figure 1). A direct appointment by the head of the executive usually comes with direct accountability to the appointing body, which is likely to impede impartiality. Nevertheless, the Corrupt Practices Investigation Bureau (CPIB) of Singapore and the Independent Commission Against Corruption (ICAC) of Hong Kong, widely considered the most effective agencies of their kind, use this kind of appointment process. Established in 1965 and 1977

respectively, they are also among the oldest ACAs. Currently there are only a few other ACAs whose heads are appointed directly by the head of the executive: they include the Prevention and Combating of Corruption Bureau (PCCB) in Tanzania, the Directorate on Corruption and Economic Crime (DCEC) in Botswana, the Economic and Financial Crimes Commission (EFCC) in Nigeria, the High Office of Oversight and Anti-corruption (HOO) in Afghanistan, and the National Anti-Corruption Commission (CONAC) in Cameroon. Most processes, by contrast, involve at least one other person, even if the role is merely ceremonial or under the authority of the president or prime minister. Malaysia, Swaziland, and Jordan require a royal decree to formalise the appointment, although the political power held by the kings in these countries varies considerably.

The majority of countries using single-branch appointments require at least some consultation *within* the executive, such as with the cabinet or specific ministers. Arguably, having several persons or bodies within the executive involved in the appointment process provides some checks and balances.

**Figure 1 – Single-branch direct appointment**

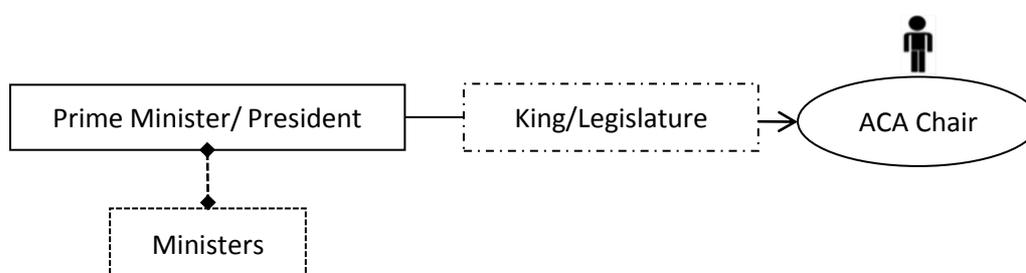


Table 1 lists appointment processes that require the head of the executive to engage with different stakeholders on the choice of candidates. In practice, these processes vary widely, depending on political constellations and context and on the interpretation of terminology. “Upon advice/proposal/recommendation” and “after consultation with” can mean different things in different jurisdictions. For example, “appointment by the president after consultation with the chief justice,” as stipulated in Pakistan, leaves unspecified whether the chief justice can propose or reject a candidate. Although no formal veto may be possible, such recommendation and consultation processes may allow for substantial informal influence.

In another set of ACAs, the heads are appointed/ratified by Parliament upon nomination by the president, as in Ethiopia, Mongolia, and Namibia, or appointed by the president upon approval/confirmation by Parliament, as in South Sudan, Sierra Leone, Malawi, and Zambia. This process presumably involves stronger veto powers than simple consultation, but it is not clear what happens if the legislature rejects the nominees. In Zambia it is the president who decides the process of ratification, potentially rendering the Parliament powerless to veto. In fact, in legislatures dominated by the governing party, ratification may be a mere formality rather than carrying substantive influence. Checks and balances through appointment or ratification by the legislature are thus highly dependent both on the body’s actual power to veto and on its composition. As Gloppen (2014, 76) has observed regarding judges appointed by the executive and ratified by the legislature, “Where the ruling party has a legislative majority, confirmation may have little effect, however, and special procedures and majority requirements are needed for an effective check.”

**BOX 1. HOW MANY TOP LEADERS?**

The character of appointment processes is closely entwined with the number of heads or commissioners and with decision-making processes within the ACA. A basic distinction is between single-headed and multi-headed agencies. Clear accountability is an argument for a single chair, who holds ultimate responsibility and decision-making power. The rationale for having a collective of commissioners is that they may be less susceptible to outside pressure, particularly if they are appointed through a shared process that loosens the ties between nominating groups and nominees. By nature, the simultaneous shared appointment process requires the appointment of several commissioners by several groups. As is the case in Myanmar and the Republic of Korea, there may still be a decision-making hierarchy. Although the sequential and mixed appointment processes could also be used for the appointment of a single chair, in practice they tend to be associated with a collective, consisting of three to a high of 11 members (in Yemen).

A multi-member commission also allows for greater representativeness, such as regional and/or gender representation, and for professional diversity. It may be possible to recruit candidates with complementary expertise, such as in forensic accounting, prosecutions, and community outreach. Decisions by representative bodies are also likely to carry more weight in divided societies, and thus the degree of heterogeneity of a society should be considered when deciding whether an ACA is to be led by one or several individuals. A possible disadvantage of a multi-headed structure is that the complexity of the system may decrease manageability, particularly if responsibilities and decision-making processes are not clearly laid out and followed, resulting in delays and/or internal conflicts.

The Indonesian Corruption Eradication Commission (Komisi Pemberantasan Korupsi, KPK) illustrates some issues that can potentially arise when responsibility is vested in a collective. Under Article 21 of the KPK Law, the agency's leadership consists of five commissioners: one chairperson and four vice-chairpersons. They collectively have ultimate responsibility for the organisation, meaning that decisions have to be taken by all commissioners as a group (Elucidation of the KPK Law). However, this does not mean that decisions need a unanimous vote. In practice, and by KPK internal regulation, a simple majority of votes is sufficient. Each commissioner, including the chairperson, has one vote. When Antasari Azhar, then chair of the KPK, was arrested in May 2009 for allegedly masterminding a murder (Butt 2011), public debate erupted about whether the KPK would be formally able to continue its operations under the leadership of its four vice-chairs. The vice-chairs underscored that decision making was collective and not dependent on the chair. It is not clear how the scenario of a tied vote in an even-numbered commission should be handled. At the time of Antasari's arrest, the focus was on whether the vice-chairs would be allowed to make decisions at all in the absence of the chair (Schuette 2011).

## 2.2 Shared, multiple-branch appointments

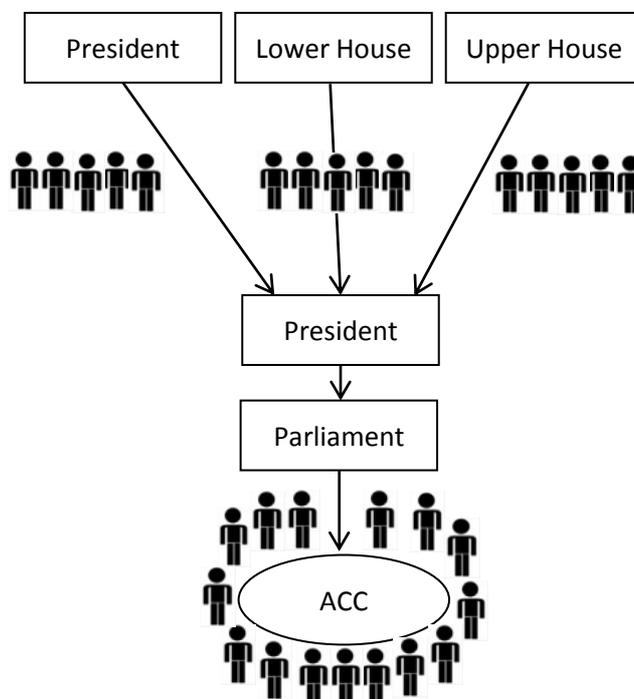
Shared responsibility for ACA leadership appointments results in a process that is substantially different from appointment mainly by a single branch. In particular, shared responsibility allows branches of the state and/or multi-stakeholder committees to make choices among candidates or propose their own, rather than being limited to simply rejecting or approving a single candidate. When the responsibility of appointment, that is, actual power to select candidates, is shared across branches, this may be done in three main ways:

- Simultaneous shared selection. Each branch appoints its own candidate(s).
- Mixed shared selection. Candidates are proposed jointly by representatives of several political institutions and then appointed by the head of state.
- Sequential shared selection. Candidates are selected sequentially, with one institution suggesting a shortlist from which another institution picks the appointees.

The scope of authority of the ACA in combination with the kind of appointment process may have considerable impact on the relationship between appointees and their appointers and ultimately on the independence of the ACA. If the ACA has the power to investigate or prosecute legislators as well as executive branch officials, it is particularly important to ensure the involvement of the legislature in the selection and appointment of ACA leadership in order to prevent the executive from using (or being perceived as using) the ACA against legislators for political purposes. Similar considerations apply if the ACA has jurisdiction over judges, although the judiciary is suspiciously absent from most of the shared selection processes. There is always the chance that those with the power of selection might try to select someone who they know will not press too hard against them or their interests. A shared process puts in place checks and balances to protect against such contingencies.

### Simultaneous shared selection

The Anti-Corruption Commission (ACC) in Myanmar, established in 2013, is one of the newest ACAs. It has a rather unusual simultaneous shared appointment process in which different organs select their own candidates (Figure 2). The president, the speaker of the upper house (Pyithu Hluttaw), and the speaker of the lower house (Amyotha Hluttaw) nominate five members each. The president then selects the chair and the secretary from among the members. All 15 members must be ratified by both houses (Pyidaungsu Hluttaw), but the houses they cannot veto candidates unless their incompetence can be clearly demonstrated. The commission is responsible to the president and its members can only be removed by the president.

**Figure 2 – Simultaneous shared selection of ACC commissioners in Myanmar**

The Anti-Corruption and Civil Rights Commission (ACRC) in Korea has only a preventive function, referring complaints to investigative authorities where required, and is therefore not included in Table 1. Nonetheless, it follows a similar process of simultaneous appointment. Its 15 members include a chair, three vice-chairs, and three standing commissioners. The chair and vice-chairs are appointed by the president on recommendation of the prime minister. The standing commissioners are appointed by the president on recommendation of the chair. The remaining eight members, non-standing commissioners, are appointed by the president. One of the eight is appointed on recommendation of the National Assembly and one by the chief justice of the Supreme Court (Article 13 of the Act on Anti-Corruption and the Foundation of the Anti-Corruption and Civil Rights Commission).

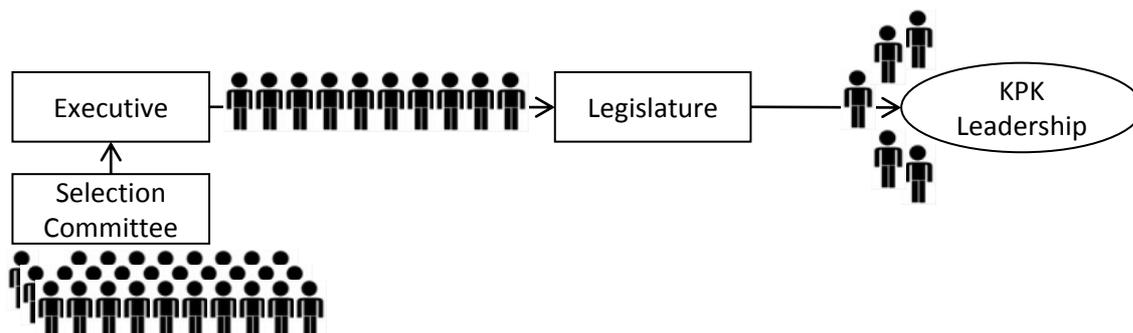
In a simultaneous selection process, an applicant is selected by a particular branch of the state and is likely to feel loyalty to the interests of the nominating group. This contrasts with a sequential selection process, described next, in which loyalties are diluted since several branches are involved in selection of the same officials.

### Sequential shared selection

In the sequential selection process for the KPKs in Slovenia and Indonesia, the Anti-Corruption Commission (ACC) in Maldives, the Ethics and Anti-Corruption Commission (EACC) in Kenya, and the Anti-Fraud Office of Catalonia (OAC), selection of the commissioners is also a shared responsibility of the legislature and the executive (president). In these cases, however, the process typically involves two or three phases, during which one branch shortlists candidates and another branch makes the final selection. In Indonesia in the first phase, a multi-party selection committee

appointed by the president screens applicants and then selects a number of eligible applicants for nomination. The committee's list of nominees, containing twice as many names as the number of positions to be filled, is forwarded by the president to the legislature for the final phase, in which the legislature chooses its preferred candidates for appointment (Figure 3; see also Schuette 2011).

Figure 3 – Sequential shared selection of KPK commissioners in Indonesia



In Kenya the composition of the selection panel is determined by law. The president selects the commissioners from a shortlist provided by the panel, and the National Assembly can only endorse or veto the finalists (Box 2). The Catalonian OAC differs in that the appointing body, the Parliament, does not have a choice of alternative candidates but considers only a single candidate chosen by the incumbent government. However, Parliament can veto the candidate after an intensive screening before the corresponding parliamentary committee. The OAC has been placed in the sequential shared selection group because the evaluation of the candidate is explicitly mentioned by law (in contrast to rules governing single-branch appointments that require ratification but do not mention evaluation). If a choice among a shortlist of candidates were to be deemed the criterion for sequential shared appointments, then the OAC would not qualify.

The sequential selection process has the advantage of encouraging greater diversity of political support and a search for consensus. Successful candidates usually have the support of both the executive and a majority in the legislature. Unlike in a simultaneous selection process, the appointees are not clearly representative of the interests of a particular branch. Rather, they have been agreed on by all branches.

**BOX 2. THE KENYAN ETHICS AND ANTI-CORRUPTION COMMISSION ACT 2011**

## Art. 6. Appointment of the chairperson and members [of the selection panel]

(1) The President shall, within fourteen days after the commencement of this Act, constitute a selection panel comprising one person from each of the following bodies: (a) the Office of the President; (b) the Office of the Prime Minister; (c) the Ministry responsible for ethics and integrity; (d) the Judicial Service Commission; (e) the Commission for the time being responsible for matters relating to human rights; (f) the Commission for the time being responsible for matters relating to gender; (g) the Media Council of Kenya; (h) the joint forum of the religious organisations described in subsection (2); and (i) the Association of Professional Societies of East Africa.

(2) The joint forum of religious organisations referred to in subsection (1)(h) shall consist of representatives of: (a) the Supreme Council of Kenya Muslims; (b) the Kenya Episcopal Conference; (c) the National Council of Churches of Kenya; (d) the Evangelical Fellowship of Kenya; and (e) the Hindu Council of Kenya.

(3) The Public Service Commission shall: (a) convene the first meeting of the selection panel, at which the members of the selection panel shall elect a chairperson from among their number; and (b) provide the selection panel with such facilities and other support as it may require for the discharge of its functions.

(4) The selection panel shall, within seven days of convening, by advertisement in at least two daily newspapers of national circulation, invite applications from persons who qualify for nomination and appointment for the position of the chairperson and members referred to under section 4.

(5) The selection panel shall: (a) consider the applications received under subsection (4) to determine their compliance with the provisions of the Constitution and this Act; (b) shortlist the applicants; (c) publish the names of the shortlisted applicants and the qualified applicants in at least two daily newspapers of national circulation; (d) conduct interviews of the shortlisted persons in public; (e) shortlist three qualified applicants for the position of chairperson; (f) shortlist four qualified applicants for the position of the members; and (g) forward the names of the qualified persons to the President.

(6) The President shall, within fourteen days of receipt of the names of successful applicants forwarded under subsection (5)(g), select the chairperson and members of the Commission and forward the names of the persons so selected to the National Assembly for approval.

(7) The National Assembly shall, within twenty-one days of the day it next sits after receipt of the names of the applicants under subsection (6), vet and consider all the applicants, and may approve or reject any or all of them.

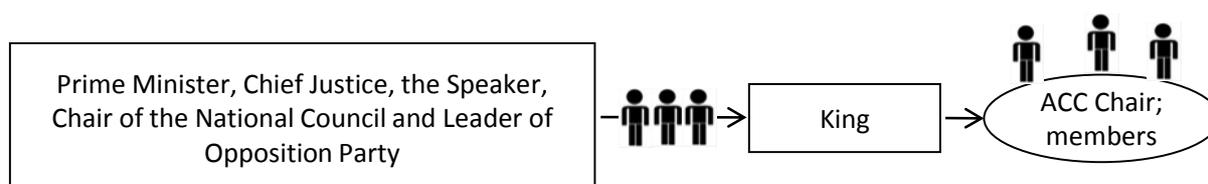
(8) Where the National Assembly approves of the applicants, the Speaker of the National Assembly shall forward the names of the approved applicants to the President for appointment.

(9) The President shall, within seven days of receipt of the approved applicants from the National Assembly, by notice in the *Gazette*, appoint the chairperson and members approved by the National Assembly. [...]

## Mixed shared selection

In Bhutan and Thailand, the candidates are proposed jointly by representatives of several political institutions and then appointed by the king. While several stakeholders are involved, details of the selection process for Bhutan's Anti-Corruption Commission (ACC) are not available (Figure 4).

**Figure 4 – Mixed shared selection of ACC chair and commissioners in Bhutan**



In Thailand, the selection process for the nine commissioners of the National Counter Corruption Commission (NCCC) is spelled out in the constitution. It follows the same procedure as for judges of the Constitutional Court. A selection committee, consisting of the presidents of the Supreme Court, the Administrative Court, and the House of Representatives, along with the president of another constitutionally independent organ, elects the candidates by open voting and then submits the names to the president of the Senate. The Senate must approve or reject the names by secret ballot. Approved candidates are appointed by the king.

By nature, the mixed shared selection process involves (political) negotiation over candidates. Where there is open voting, as in Thailand, factional support for specific candidates is at least transparent. A consensus-oriented process, especially when conducted behind closed doors, may lead to perceptions of political trading or selection of the “least common denominator” candidate.

The Thai Constitution of 2007 is one of the few legislative measures examined here that prescribes what to do when a nomination fails, that is, when the shortlist is rejected in a sequential shared selection process. If the Senate rejects suggested candidates, they are reconsidered by the committee. If the committee unanimously insists on one or several candidates, the matter is brought before the king. If the process cannot be concluded in the prescribed time period, the Supreme Court and the Administrative Court can replace the selection committee with senior judges.

Act 14/2008 on the Anti-Fraud Office of Catalonia, for its part, requires a second vote on the candidate if he or she does not get a three-fifths majority: “If the candidate does not obtain the required majority he/she must be submitted to a second vote, at the same Plenary Session, and in order to be chosen will then require a favourable vote of the absolute majority of the members of the chamber.” It does not say what happens if there is no absolute majority in the second round.

Slovenia and Kenya stipulate what to do if all candidates are rejected: the shortlisting process starts all over again. It is, of course, impossible to foresee all possible obstacles to a timely appointment process, so the legislation has to be clear but at the same time general enough to accommodate different scenarios. Rejection of nominated candidates is not the least likely scenario, and some provisions should be in place to avoid an outright blockage. Inadequate rules of appointment can and should be adjusted, as was done, for example, in Slovenia and Latvia (Box 3).

In practice, formal rules are supplemented by informal institutions and expectations. In Indonesia, for example, the law does not specify whether the president must accept the shortlist prepared by the selection committee. Nonetheless, it is understood that the president would need very convincing arguments to justify rejection of a candidate proposed by a selection committee that he or she has endorsed, and the president would need to explain these reasons publicly.

### **BOX 3. CLARIFYING OPAQUE RULES OF APPOINTMENT**

*By Gabriel Kuris*

The early histories of two of Europe's most highly regarded and popularly supported ACAs, Slovenia's Commission for the Prevention of Corruption (KPK) and Latvia's Corruption Prevention and Combating Bureau (KNAB), show the risks of setting rules for the appointment and removal of ACA leadership that are unclear, opaque, or vulnerable to political influence. These cases also show the potential for correcting such errors.

The 2004 law that established Slovenia's KPK provided for five commissioners, nominated by various stakeholders and appointed by Parliament to six-year terms. The commissioners could be removed only for specific reasons, mirroring those for judicial removal. Shortly after the KPK launched, a newly elected government coalition vowed to dismantle the commission. For four years, the new regime clashed with the KPK, but the government was powerless to remove the commissioners without cause. The KPK chair adhered rigorously to the law and thus served out his full term. Still, the government's feud with the KPK showed the risk of politicisation. Reforms passed in 2010 strengthened the KPK's powers and further depoliticised the commissioners' appointment and removal. The president, who has a predominantly ceremonial role in Slovenia, now selects the commissioners from a shortlist selected by a multi-stakeholder panel through an open recruitment process. The law also clarified and narrowed removal procedures, giving the nominating panel exclusive authority to remove any commissioner for only two reasons: incarceration or permanent incapacitation (for more information see Kuris 2013).

Latvia's KNAB, as established in 2002, had a director appointed by the cabinet and confirmed by Parliament. The cabinet could remove the director only with legal cause. The law allowed for, but did not mandate, an open nomination process. Thus, successive governments used a closed and secretive process to appoint KNAB directors, which undermined the directors' credibility within the agency and among the public. When one proved unafraid to challenge the government, the prime minister repeatedly tried to remove him. However, the prosecutor general rejected the dismissal as legally baseless. When the cabinet persisted in trying to dismiss KNAB's director over the prosecutor general's objections, this led to a mass protest that caused the ruling coalition to collapse.

Unfortunately, a 2008 scandal within KNAB allowed the government to remove the head and replace him with a more compliant successor. This threw the agency into disarray until reforms in 2011 and 2012 better insulated KNAB director from politics. The new process requires the prime minister to appoint KNAB's director through an open competitive process overseen by an independent commission of high-level state officials and (nonvoting) civil society representatives. The reform helped restore KNAB's credibility (for more information see Kuris 2012).

## 2.3 Selection panels: Who selects the selectors?

The “who” and “how” in appointments are obviously intertwined. There has been much research on the appointment of judges and how to design the procedures in order to reduce political partisanship. Slotnick (1984, 2235) has argued that who compiles the shortlist of candidates matters as much as the process itself: “The data suggest that the identity of the actor who exercises the dominant role in designating judicial nominees is at least as important and may be more important than the nature of the name-generation process for understanding the outcomes of those processes.” In other words, when there is a selection panel to screen and shortlist candidates, the composition of the panel is crucial.

Broad-based representation of different groups on the selection panel may help weaken the role of special interests and gain public confidence. But this depends on how and by whom the members of the selection panel are appointed. Ultimately, there will always be someone with the power to select the members of the selection panel, and that power can be used to pursue a partisan agenda.

Nevertheless, two factors can mitigate the risk of abuse by particularistic interests: transparency and regulation. The Kenyan law provides the best example of the latter. The Kenyan Ethics and Anti-Corruption Commission Act of 2011 prescribes quotas for representation on the selection panel, including government representatives, religious organisations, and the media (see Box 2). It is not clear, however, whether the religious associations may select their own representatives to a joint forum of religious organisations on the panel or whether they are selected by the president. The Kenyan Act provides for transparency, at least to some degree, by stipulating a timeline for the process, requiring the call for applications and later the shortlist of candidates to be advertised in at least two daily newspapers with national circulation, and requiring public interviews with the shortlisted candidates. This allows for public scrutiny and reporting of background information on the persons being considered. In Indonesia, also, the law stipulates the inclusion of civil society representatives on the selection panel. It has become standard practice to publish the names of the candidates that pass important steps in the recruitment process, consisting of tests and interviews. In a country in which appointments were previously driven largely by patronage, the open recruitment process and its focus on merit unquestionably constitutes a new paradigm, one that has since been introduced to other commissions in Indonesia as well (Schuette 2011).

Nonetheless, the account of Smokin Charles Wanjala, former assistant director of the Kenyan Anti-Corruption Commission, which was redesigned into the EACC by the 2011 Act, demonstrates the trade-off between checks and balances on one hand and timely appointments on the other (Box 4). It suggests that prolonged and politicised processes can lead to public frustration. After the new legislation was passed, Parliament ignored concerns about the integrity of the candidates expressed by its own parliamentary committee that was in charge of the vetting. The candidates were appointed but then faced an injunction by the High Court, which eventually declared the selected chairman unfit for office. As frustrating as this protracted process may have been for those concerned and for those wanting to see the new commission take action under a new leadership, it also shows the working of important checks and balances. Naturally, the more stakeholders are involved in the selection and consultation process, the more time and resources are required.

**BOX 4. FIGHTING CORRUPTION IN AFRICA: MISSION IMPOSSIBLE?**

*By Smokin Charles Wanjala*

“With the new constitution came the Ethics and Anti-Corruption Commission (EACC) (2011). The EACC replaced KACC and altered the agency’s governance structure by replacing the directors and assistant directors with a commission of three, comprising of a chairman and two member commissioners. [...]. Following protracted recruitment processes and acrimonious approval debates, parliament approved the names of a chairman and two commissioners to take over the stewardship of the reconstituted anticorruption commission. The parliamentary committee on Justice and Legal Affairs had earlier voted to reject the three on grounds that they had not demonstrated sufficient passion necessary to fight corruption. The proposed chairman had come in for scrutiny following accusations of impropriety while serving as the legal officer of a collapsed state corporation. The Committee’s motion of rejection was however defeated during the vote of the full house. But this parliamentary action was to leave a bitter taste in the mouths of some both inside and outside parliament.

No sooner had the three been appointed by the President as chairman and member commissioners of the Ethics and Anti-Corruption Commission than a litigant obtained an injunction from the High Court restraining the Chairman from assuming office until a case filed challenging his appointment had been heard and determined. And so the circus continued with the new commission being thrown into abeyance from the very beginning. When the case against the chairman was finally heard and determined in September 2012, the High Court declared that the chairman was unfit to hold the high office to which he had been appointed. In reaching this decision, the court observed that serious integrity questions had been raised against the chairman during the approval hearings. The court found that these questions had not been answered at all thus offending chapter six of the constitution which requires that all those proposed to hold public office must pass the integrity test. The court’s decision left in place the Ethics and Anti-Corruption Commission intact but rudderless.”

*Source: Wanjala 2012, 9.*

Table 2 – Summary of appointment procedures and contextual considerations

Key factor	Approach	Pros	Cons	Recommendations and contextual considerations
Stakeholders involved in selection process	Single – direct	Clear line of accountability Fast process	Vulnerable to political influence and bias	Having several persons or bodies within the executive involved may bring some checks and balances.
	Single –consultation with another branch or political opposition required	Limits political bias	Dependent on the political constellation and on formal and informal influence of other branch/opposition	Is it clear what “upon advice/proposal/ recommendation” or “after consultation” means operationally?
	Single –confirmation or ratification by another branch required	Limits political bias	Dependent on the political constellation and on formal and informal influence of other branch/opposition	What is the actual veto power of stakeholders, e.g., how strong is the opposition in Parliament? Are there clear regulations on the process to be followed when one branch vetoes a candidate?
	Shared –sequential	Limits political bias	Resource-intensive	Can candidates be rejected? Are there clear regulations on the process to be followed in case of a rejection?
	Shared –simultaneous	Allows for diversity and clear-cut representation of interests (checks and balances)	Likely loyalty to appointing branch	Process is more appropriate for judicial appointments, as judges can issue distinct legal judgments and minority reports; ACAs are expected to “speak with one voice.”
	Shared – mixed	Limits political bias	“Least common denominator” candidate Negotiations about candidates can be more easily disguised than in other shared processes	Much depends on how the multi-branch selection committee is set up and its rules of procedure. Existing shared mixed processes are not considered very transparent.
Composition of shortlisting committee	Any of the above processes can use a shortlisting committee. Having a broad array of different groups represented on a selection panel may weaken particularistic interests and gain more broad-based public support.			
Number of ACA leaders	One	Clear accountability Fast decision making	Very vulnerable to external pressure	Those branches subject to investigation of the ACA should also have a say in the selection process.
	Several	Vulnerability to external pressure is distributed among several people Can be used to ensure representativeness in diverse societies	Accountability can be blurred Making decisions can take time	Works only for multi-headed commissions.

### 3. Eligibility criteria

Eligibility criteria determine the scope of the pool of viable applicants. The inclusion or exclusion of a certain group of candidates, for example non-civil servants or party office holders, can have an effect on the actual or perceived impartiality, competence, and responsiveness of the agency's leadership.

On the one hand, explicit criteria can make the selection more rigid and narrow the field of eligible candidates. Gloppen (2014, 76) notes on judicial appointments: "Clear and relatively demanding selection criteria (for example a minimum of 10 years of legal practice or more for the higher positions) reduces the pool of qualified candidates and makes political appointments more difficult, particularly in developing countries with a limited legal profession."

On the other hand, clear criteria make the process more transparent and accessible to external scrutiny. Ideally, these criteria can be subject to legal review, as happened in Indonesia twice (for a detailed account see Schütte 2011).

Eligibility criteria for ACA heads vary significantly across countries. The most common include age, nationality or residence, profession, education, political affiliation or public office, and years of experience, but countries also add their own particular requirements. In some countries only civil servants can be considered as candidates to head an agency. In others, these positions may be open for application or nomination: in Maldives, Kenya, and Indonesia, for instance, the law requires an open call for applications, and any adult citizen can apply. This can lead to a flood of applications that then must be carefully screened. In such an open process, clear eligibility criteria for selection are particularly important.

Ten of the laws examined here, including those in Ethiopia, Haiti, Singapore, Tanzania, and Togo, do not stipulate any eligibility criteria. For a detailed list of eligibility criteria for the other 36 ACAs, see Annex 2.

#### 3.1 Professional background and experience

The judiciary draws its recruits from a small, very specialised, highly qualified professional pool. In contrast, ACA leadership can potentially be recruited from a much larger pool, including various professions beyond law, such as accounting, information technology, and social sciences. Most laws examined here include a wide range of potential professional backgrounds, or leave this criterion undefined. The ACAs of Pakistan, Sri Lanka, Swaziland, and Western Australia, and the Indian Lokayukta, however, only consider candidates who have held office as a judge at a high or supreme court, or would be qualified to do so. Argentina, Mauritius, Moldova, Mongolia, the Philippines, and Sierra Leone require the heads of their ACAs to have experience in law for specified minimum periods ranging from six to 15 years. Notably, Sierra Leone requires the deputy ACA head to have least ten years of experience in accounting, banking, financial services, or a related profession.

In the case of a multi-headed leadership, a mix of professional backgrounds can be of great value, insofar as both corruption prevention and investigations benefit from multi-disciplinary analysis and approaches. In Indonesia, the law does not require the commissioners to represent a mix of backgrounds; nonetheless, the secretary of the selection committee in 2007 likened the KPK to a house that needed a mason, a painter, and a welder. "The composition has to be balanced so that [the members] complement each other," he explained to the Indonesian daily *Kompas* (Hanni 2007a). As pointed out in Box 1, the decisions of representative bodies are also likely to carry more weight in

divided societies. This representativeness can go beyond profession and include ethnicity, gender, religion, or the inclusion of civil society activists. Such criteria, however, are hardly ever specified in legislation.

### 3.2 Age

Where a minimum age is specified, it is above 40 in most countries examined here, with the exception of Argentina (35 years) and Maldives (25 years). In Indonesia, limitations on age and years of experience led to petitions for legal review. Both petitions, however, were rejected by the Constitutional Court, which ruled that certain requirements such as age and education were accepted objective standards of the skills and experience needed in governmental positions (Schütte 2011).

### 3.3 Citizenship and residence

Laws in some countries also specify citizenship and residence requirements. Bhutan and Hong Kong have particularly strong provisions in this respect. In Bhutan, the head of the ACC must be born in Bhutan and must not be married to a foreigner (this brings to mind the notorious provision of the Myanmar constitution that bars someone married to a foreigner from running for president, a provision that clearly targeted the leader of the political opposition, Aung San Suu Kyi). In Hong Kong, only Chinese citizens who are permanent residents of the region with no right of abode in any foreign country and who have ordinarily resided in Hong Kong for a continuous period of not less than 15 years are eligible to head the ICAC. It is not clear whether the Bhutanese or Chinese stipulations are targeted to exclude specific individuals from applying. But these criteria seem overly nationalist and restrictive. It is not clear how marriage to a foreigner rather than a national can negatively influence the performance of an ACA head.

### 3.4 Affiliations and potential conflicts of interests

Some laws require eligible candidates to be civil servants or to hold a public office. In some cases such officials are required to leave their positions upon appointment to the ACA, but in others they may hold the post simultaneously with their ACA leadership position. Holding several offices simultaneously always bears the potential for conflict of interests, but it is especially problematic when one office involves leading an agency whose autonomy is important. Prohibition of multiple simultaneous office holding may appear in the legislation regulating the ACA or in other regulations, such as in the civil service code.

Nevertheless, there are instances in which ACA heads and commissioners have held several positions that have the potential to lead to conflicts of interests. For example, the Office of the Special Inspector General for Afghanistan Reconstruction (SIGAR) reported in an audit of the High Office of Oversight (HOO) in 2009: "Contrary to generally-accepted standards and ethical codes for oversight organizations, both the Director General and the Deputy Director General hold, and receive remuneration for holding, advisory positions within the Office of the President outside their HOO appointments. In addition to their leadership positions with the HOO, the Director General and Deputy Director General are also employed as presidential advisors within the Office of the President with the titles, respectively, of Advisor to President on Administrative Affairs and Chief of the Presidential Programs. We believe that holding two government positions simultaneously can, and in this case does, create a conflict of interest" (SIGAR 2009).

Recent or ongoing political party office is explicitly prohibited in about a third of the laws examined here, including Afghanistan's. Its absence from the other laws does not necessarily mean that it is allowed in those countries, as it may be regulated in other legislation. Nepal and Maldives do not even permit the ACA head to hold party membership while in office. Madagascar, which does not stipulate eligibility criteria per se, also declares the office of director general of the Bureau Indépendant Anti-Corruption (BIANCO) incompatible with any elective or other professional, remunerated position with a political party.

### 3.5 Other criteria: Religious belief and gender

Two countries, Maldives and Indonesia, include provisions on religious belief in their eligibility criteria. In Maldives, eligible candidates, and indeed all Maldivian citizens, must be Muslim. In Indonesia, candidates must profess belief in an almighty god, a pro forma requirement since religious affiliation is already required on identity cards.

Three countries have specific provisions on the gender composition of the ACA membership. The law establishing the South Sudan Anti-Corruption Commission (SSACC) prescribes that "at least twenty-five percent of the aggregate membership shall be women." The Kenyan law stipulates that "not more than two-thirds of the members are of the same gender." The 11 members of the Supreme National Authority for Combating Corruption (SNACC) in Yemen "should include representatives from civil society organizations, private sector and women."

In practice, there are very few female heads of ACAs. In September 2014, this author counted five female heads among the agencies examined here, namely Rosewin Wandu of the Zambian ACC; Neten Zangmo of the Bhutanese ACC; Nafi Ngom Keita of the National Anti-Corruption Office (OFNAC) of Senegal; Rose Seretse of the Directorate on Corruption and Economic Crime (DCEC) of Botswana; and Afrah Saleh Mohammad Badwylan of the Yemen SNACC. In this regard, the ACAs unfortunately replicate the pattern in other justice sector offices, particularly law enforcement agencies, where female senior officers are still rare.

### 3.6 Character

A number of laws have clauses on the character of eligible candidates. Applicants are commonly required to possess good character, high integrity, high moral reputation, recognised probity, and the ability to do their work fairly and independently. Such character traits and behaviour are more difficult to measure than age, professional experience, or affiliations. To make such clauses more than rhetorical flourishes, resources must be allocated for efforts to obtain and evaluate relevant information on the candidates. It is difficult to gauge the extent to which such verification is implemented in practice.

Many laws bar candidates with a criminal record, at least within a certain time frame. In Namibia, for example, offences of a political nature committed before independence are excluded from this rule. What is included as a relevant offence may also be specified in more detail. Again using Namibia as an example, "unrehabilitated insolvents," those who have not been discharged in a bankruptcy proceeding, are not permitted.

### 3.7 Application versus nomination

As mentioned above, most candidates are nominated based on the selection criteria, but in a few countries such as Indonesia, Maldives, and Kenya, recruitment is open and any adult citizen can apply. This creates opportunities for those less well connected, but it may also alienate highly qualified and experienced officials, who would expect to be nominated and appointed and may find aspects of the competitive, multi-step shortlisting process humiliating. In Indonesia, this problem was solved by allowing candidates to be nominated by non-governmental organisations (NGOs). Nevertheless, those candidates still had to undergo the same screening process as others (Schütte 2011). While certainly more resource-intensive than straightforward nominations or even direct appointments, open recruitment with clear selection criteria reduces the likelihood of patronage appointments and can help generate public confidence and trust in the ACA's leadership.

**Table 3 – Summary of eligibility criteria and contextual considerations**

Key factor	Criteria	Recommendations and contextual considerations
<b>Eligibility criteria</b>	General	Are the eligibility criteria clear and publicly accessible? Are particular individuals deliberately excluded by law?
	Professional background and experience	In multi-headed agencies, practice has shown that having commissioners with different expertise (i.e. accounting, law, economics) can be an advantage.
	Restrictions on political and other affiliations	To avoid conflicts of interests, it seems warranted to explicitly prohibit candidates with recent or ongoing political office; at a minimum, nominees should be required to give up any elective or other professional remunerated position or engagement with a political party while in office at the ACA.
	Character	This is notoriously difficult to assess, but references and records can be checked and the public can be encouraged to provide feedback through hotlines. Nevertheless, evidence must be weighed, as there may be attempts to disqualify candidates through false accusations. Candidates with criminal records or cases pending against them are very vulnerable to external pressure.
	Age, citizenship and residence, religion, gender	These should be secondary to the above criteria, although they may be of particular importance in some contexts. In this author's view, if included, they should not be overly restrictive.
<b>Mode of nomination</b>	Application, open to all	The advantage of an open application process is that, in combination with clear eligibility criteria, it supports merit-based appointment and allows for high degree of transparency and public ownership. The disadvantages are that screening a large number of candidates can be very resource-intensive and that senior officials may be reluctant to apply and compete.

	Nomination	<p>Can be part of an open application process, as in Indonesia.</p> <p>It needs to be clear who (individuals, organisations) may nominate a candidate.</p> <p>Nomination is generally less resource-intensive than open application because it produces fewer candidates, but thorough screening is still needed.</p> <p>Bonds between the nominee and the nominating party may impede the candidate's independence in office. To enable public scrutiny, nominations should be transparent.</p>
<b>Transparency of selection process</b>	Open hearings, public interviews of candidates, and open ranking lists, accessible nationwide	<p>Which parts of the process are open for the public to observe?</p> <p>While transparency measures can be resource-intensive (e.g., publishing shortlists in the media), such measures may also generate additional information on candidates.</p> <p>Transparent processes are likely to generate more public trust in the appointment process and consequently more public support for the ACA.</p>

## 4. Tenure and removal

The Jakarta Statement on Principles for Anti-Corruption Agencies (2012) makes two recommendations affecting the tenure and removal of the heads of ACAs:

*“Removal:* ACA heads shall have security of tenure and shall be removed only through a legally established procedure equivalent to the procedure for the removal of a key independent authority specially protected by law (such as the Chief Justice).”

*“Immunity:* ACA heads and employees shall have immunity from civil and criminal proceedings for acts committed within the performance of their mandate. ACA heads and employees shall be protected from malicious civil and criminal proceedings.”

This section discusses security of tenure and the principal types of removal procedures. The focus is on which stakeholders have to be involved in a removal process and what kinds of behaviour can lead to removal from office. There is a potential trade-off and tension between independence and accountability. On the one hand, the head of an agency should be held accountable for misconduct. On the other hand, what constitutes misconduct must be clearly defined in order to reduce the risk that removal may be misused to get rid of an agency head who has pursued zealous anti-corruption actions (see Box 5 for an unsuccessful attempt to frame and suspend two Indonesian commissioners in 2009).

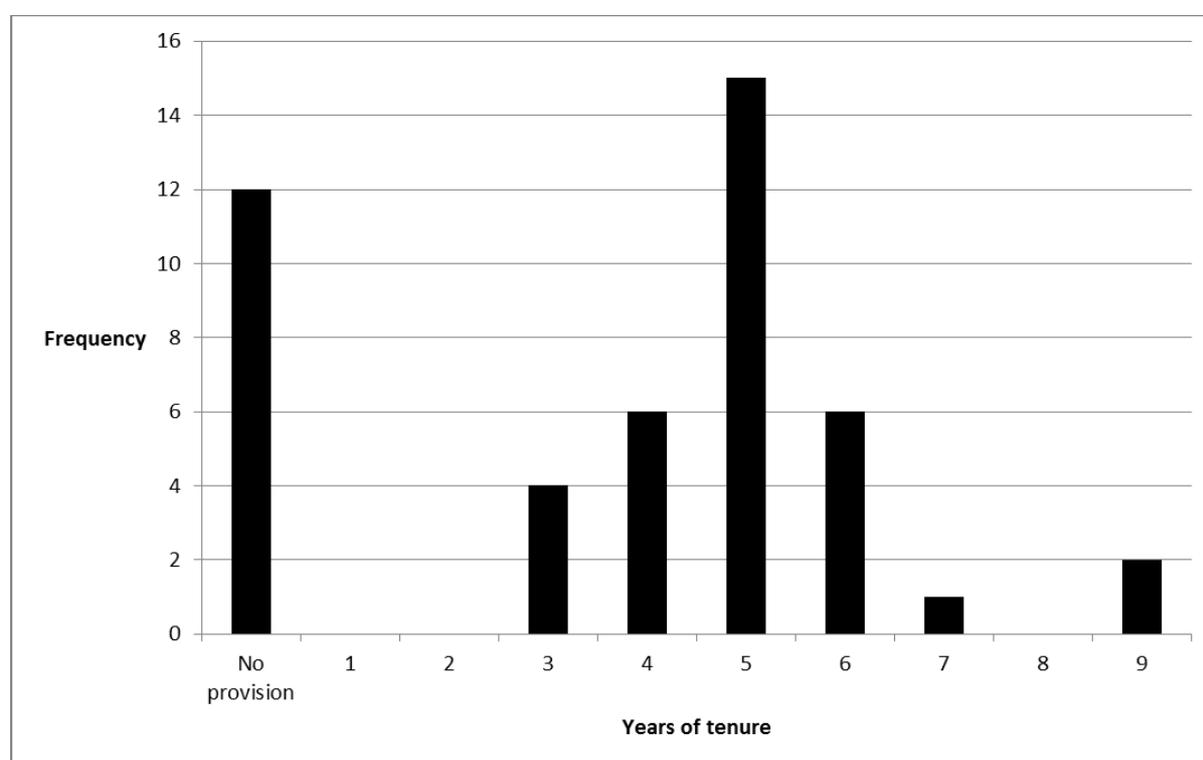
### 4.1 Length of tenure

Tenure for heads of ACAs varies from three to nine years, with a second term allowed in most of the countries where the term is five years or fewer. The most frequent length of tenure among the 46 ACAs examined here is five years (Figure 5). Twelve pieces of ACA legislation did not stipulate the length of tenure. This provision may be stated in other legislation or regulations or, more problematically, may be at the discretion of the appointing body.

The process for renewal is not detailed in most laws. Assumedly it would involve assessment by the same stakeholders involved in the original appointment, either going through the same steps again or through a separate retention process. In a retention process there is no opponent, and stakeholders simply vote “yes” or “no” on whether the incumbent should be retained in office.

In Indonesia, a commissioner must apply again and go through all steps of the process together with other applicants if he or she wants to stay in office for a second term (see Schuette 2011 for an account of such an application for reappointment in 2007).

**Figure 5. Distribution of years of tenure among 46 ACAs**



## 4.2 Removal criteria

In many countries, removal procedures are not clear and have the potential to be abused by those in power to get rid of a dedicated anti-corruption crusader. In most countries, removal from office must happen when the head of the ACA has been convicted of a crime. But vague terms such as “dereliction of duty,” “misbehaviour,” or “incompetence” are also used, and such terms, combined with the absence of specific criteria for what constitutes misconduct or incompetence, may allow political actors a free hand to interfere. In some cases removal requires legal review by the public prosecutor (e.g., Latvia, Mauritius) and ultimately a high or supreme court. Thus the degree of judicial independence in the country can have significant influence on removal procedures, arguably more so than on appointment procedures.

**BOX 5. THE "CRIMINALISATION" OF KPK COMMISSIONERS IN INDONESIA**

The tenure of a KPK commissioner is four years, and only the few specific circumstances set forth explicitly in Article 32 of the KPK Law can lead to the premature end of his or her term. These can be divided into two broad categories: first, the commissioner is no longer available due to death, prolonged absence, or a personal decision to resign; or second, the commissioner becomes a defendant in a criminal case or the object of other sanctions specified in the KPK Law. If a commissioner is prosecuted and designated a defendant (*terdakwa*) in a criminal case, he or she must be permanently dismissed from office (Article 32.1.c), regardless of the outcome of the trial. In either case the president would issue the dismissal and start a new selection process, as outlined above.

In 2009, KPK commissioners Chandra Martha Hamzah and Bibit Samad Rianto, facing fabricated criminal charges, filed a petition to review the automatic dismissal of KPK commissioners who become defendants in a criminal case. They argued that the provision contradicted the presumption of innocence and that spurious criminal charges against KPK commissioners could be used to diminish the agency's effectiveness. Normally officials of other state agencies are suspended upon being criminally charged, but they are permanently dismissed only in the event of a guilty verdict. The Hamzah/Rianto petition is the only request for constitutional review made to date by members of the KPK.

The Constitutional Court agreed that the commissioners could not be permanently dismissed from office unless found guilty by a court (Decision 133/PUU-VII/2009). This was a landmark decision. Prior to the Court's ruling, it would in theory have been possible to make all KPK commissioners suspects on invented charges and thereby to effectively suspend the whole leadership. There were indeed concerns that a systemic threat lay behind the accusations against Hamzah and Rianto. The term *kriminalisasi* – intentional criminalisation through unfounded accusations – was frequently used to describe the "Bibit-Chandra affair" by employees of the KPK, NGOs, and the media, including the prominent legal platform Hukumonline (28 September 2010).

In practice, getting rid of an ACA head can be a difficult public process, and political leaders tend to view it as a last resort, to be used only in cases where there has actually been criminal misconduct or severe incompetence by the head. When politicians want to undermine an ACA and its head, there are other ways to do so, less public than removal. These include, for example, budget starvation and even new legislation dismantling the ACA. Political leaders may also resort to clearly illegal measures such as threats and assassination attempts. Such pressures were brought, for example, against Nuhu Ribadu, chair of the Nigerian EFCC, who was first removed from his position for a one-year training course and then menaced by two attempted assassinations; he later moved to England.

In sum, removal procedures are just as important for the independence of an ACA as appointments and should be stipulated clearly in the legislation.

### 4.3 Preventing conflicts of interests: Cooling-off periods

One risk related to the tenure of ACA heads is that potential conflicts of interests may emerge in relation to their subsequent employment – the so-called revolving-door phenomenon. Only two of the 45 laws examined here have stipulations on employment and/or a cooling-off period for ACA heads or commissioners leaving their posts, as is common for auditors and members of regulatory agencies.

Although the issue may be covered to some extent by other legislation, such as codes for public officials or civil servants in general, an explicit provision to prohibit ACA leaders from using their office or information gained in it to benefit themselves or a possible future employer seems warranted. Other measures include confidentiality clauses such as the one applied to the IAAC of Mongolia: “The officers of the Anti-Corruption Agency are prohibited to use any information exposed to them in the course of their service for any purpose after termination of their service as officers.” But such clauses cannot replace a cooling-off period and would be unlikely to counter the impression of a corruption risk when a former ACA head immediately takes up a membership on the board of a company after leaving office.

Table 4 provides excerpts from the two pieces of legislation reviewed that have provisions on employment after leaving the ACA. In each case, the provision for debarment seems to focus on the area where conflict of interests is considered most likely. In the Philippines this is electoral office; in India it is the public service generally. The Philippines Ombudsman Act bars the departing ombudsman from running for electoral office or practising before the Office of the Ombudsman for two years. The Act also includes an eligibility criterion preceding appointment: during the year before the appointment, the incoming ombudsman or his/her family may not have been involved in a case before the Office of the Ombudsman. The Central Vigilance Commission and the Lokayukta in India both bar commissioners from staying in government service after their term at the commission.

While such restrictions may prevent undue influence on commissioners through offers of future government employment, such as a choice diplomatic assignment, they may also indirectly increase the risk of misconduct. Unless the commissioners are all so senior that they are expected to retire upon completion of their term – making the post unattractive to ambitious young people – they will need to seek an income outside government service after leaving the ACA. This may put them under pressure to seek contacts with the private sector while still in office. It is beyond the scope of this paper, but it seems worthwhile to investigate further what ACA heads have done after completing their terms and whether conflicts of interests have emerged in practice.

**Table 4. Examples of cooling-off provisions**

Philippines Ombudsman Act, Section 9	Central Vigilance Commission Act, 2003, Chapter II, Article 5.6
<p>“The Ombudsman, his Deputies and the Special Prosecutor shall not [...] be qualified to run for any office in the election immediately following their cessation from office. They shall not be allowed to appear or practice before the Ombudsman for two (2) years following their cessation from office. No spouse or relative by consanguinity or affinity within the fourth civil degree and no law, business or professional partner or associate of the Ombudsman, his Deputies or Special Prosecutor within one (1) year preceding the appointment may appear as counsel or agent on any matter pending before the Office of the Ombudsman or transact business directly or indirectly there with.”</p>	<p>“On ceasing to hold office, the Central Vigilance Commissioner and every other Vigilance Commissioner shall be ineligible for – (a) any diplomatic assignment, appointment as administrator of a Union territory and such other assignment or appointment which is required by law to be made by the President by warrant under his hand and seal; (b) further employment to any office of profit under the Government of India or the Government of a State.”</p> <p>A similar provision is included in the Lokayukta Law.</p>

## 4.4 Continuity of operations and replacements

Another risk related to the untimely removal or resignation of an ACA head is disruption of the agency's operations until the appointment of a new head. The Jakarta Statement recommends: "*Continuity*: In the event of suspension, dismissal, resignation, retirement or end of tenure, all powers of the ACA head shall be delegated by law to an appropriate official in the ACA within a reasonable period of time until the appointment of the new ACA head." Most of the laws under examination here have such provisions. For ACAs in Australia, Bhutan, Botswana, Cameroon, Madagascar, Malawi, Namibia, the Philippines, Sierra Leone, Spain, Swaziland, Yemen, and Zambia, the deputy chair or a member of the commission automatically replaces the chair. Laws in other countries call for reopening the appointment process, in some cases specifying time limits.

Dismissals typically involve a more diverse range of stakeholders than appointments. However, they also entail additional risks, associated with vague criteria for dismissal and the need for timely replacement of the officer to ensure continuous effective operation of the ACA. It is important to reduce vagueness and to account for such contingencies.

**Table 5. Summary of tenure and removal provisions and contextual considerations**

Key factor	Approach	Pros	Cons	Recommendations and contextual considerations
<b>Tenure</b>	Long single term	As with judges, long tenure provides head with some security, encouraging greater independence.	Makes it difficult to get rid of a poorly performing head.	It is important to have the length of tenure determined by law. Many laws examined here do not specify the term, leaving the heads with some insecurity.  Beginning and end of term ideally should not coincide with general political elections.
	Renewable term	May give head more flexibility in career planning.  Allows for performance assessment.	Reappointment can subject head to external pressure.	Retention is a more efficient process than having an incumbent going through the competitive selection process again.
<b>Removal</b>	<p>The most important observation is that removal procedures need to be clearly stipulated, which is not the case for most of the ACAs examined here.</p> <p>The criteria for dismissal should be clear, linked if possible to a code of ethics.</p> <p>Heads of ACAs should have immunity from civil and criminal proceedings for acts committed within the performance of their mandate.</p> <p>More than one branch should be involved in a removal decision to reduce the risk that a head will be removed to curtail the ACA's effectiveness.</p> <p>To ensure continuity of operations, there should be a provision for transfer of powers to an appropriate official if the head resigns or is suspended or dismissed.</p> <p>A cooling-off period may prevent conflicts of interests but might bring financial hardship to a departing ACA head unless there is a support fund for the cooling-off period.</p>			

## 5. Recommendations

“A fish rots from the head” is the saying when the head or leadership of an organisation is seen as responsible for the unethical behaviour of its personnel. Undue external interference with an ACA is likely to target the head, and a co-opted or corrupted head can do serious damage to the effectiveness and reputation of the ACA. A number of factors are crucial to the independence and effectiveness of an ACA, as noted in the Jakarta Statement, including the ACA’s mandate, permanence, budget security, autonomy over financial and human resources, and internal and external accountability mechanisms, to name a few. But the procedures for appointment and removal are particularly critical.

When one analyses decision-making processes in appointments and removals, it is important to consider the political regime and institutional landscape of the country in question. The veto power of Parliament in one country may be real and strong, whereas in another jurisdiction the legislature may be reduced to rubberstamping the decisions of the executive. When the political system is competitive, the competitors may need an independent arbiter of their behaviour and may support the independence of the ACA, just as they respect the independence of the courts (see, for example, Ginsburg 2003 on judicial reviews). The degree of public support the ACA enjoys, and whether the governing party or parties also depend upon public support to remain in office, will affect the agency’s stance towards power holders.

Given different contexts, no specific set of procedures for appointments and removals can be considered ideal for all environments. Nevertheless, some general guidelines are possible. Both appointments and removals benefit from an open process that includes several stakeholders. Broad consultation and/or ratification by more than one branch of government, as well as consultation with civil society, offers more safeguards than direct appointment or removal by a single power holder, typically the head of the executive. This open process should be combined with clear and transparent criteria for candidate eligibility and for behaviour that leads to early removal from office. The benefits are obvious: a sound appointment process can broaden support for an agency’s work and lead to selection of a more effective head, and a clearly defined removal process can make it difficult for those in power to terminate an ACA head for the wrong reasons. These procedures can be established and revised during various stages of the lifecycle of an ACA – ideally during the initial legislative design of the agency, but also later, when opportunities for legislative review occur.

### 5.1 A cautious role for donors

Donors have supported and even promoted the establishment of ACAs, providing much-needed resources and encouragement. Yet in taking such an active role, donors have probably done as much harm as good. In some cases they have pushed foreign models – notably, the Hong Kong ICAC model – on jurisdictions with a different legal traditions, and they have overwhelmed some ACAs with unrealistic expectations and ill-adjusted project cycles (Doig, Watt, and Williams 2005). This has contributed to the unflattering reputation of ACAs as foreign pets and as window dressing that is ineffective in addressing corruption. Donors should therefore exercise extra caution and self-reflection before prescribing specific models.

What donors can do is to support each partner in transforming general principles into procedures that work in the given context.

- In particular, donors can support the transparent and open implementation of recruitment and removal processes, drawing from examples of good practices in this paper.
- Civil society and the media may be afforded special roles in the appointment process, such as by participating in selection panels or reporting on candidates and their progress through the selection pipeline.
- Donors can also facilitate meetings where heads of ACAs, along with officials in law enforcement and the judiciary, exchange experiences and offer moral support to those experiencing political pressure. Since 2005, for example, the Norwegian Agency for Development Cooperation (NORAD) has sponsored regular meetings of its Corruption Hunter Network, where representatives from up to 20 countries hold confidential discussions following the Chatham House rule.
- When ACA heads and personnel confront acute threats, international partners can help find temporary safe places overseas, such as by removing someone from a tense situation for a prolonged consultation, study visit, or conference abroad.

After all, the heads of ACAs are often the “agents of change” that so many donors seek to engage in their programmes. Well-designed appointment and removal processes can provide the leaders of ACAs with independence and security of tenure, but when these leaders have the integrity and competence that are ideal qualities in the head of an ACA, they will still face resistance when going up against vested interests.

## Annex 1. List of anti-corruption agencies and legislation

No.	Country	Name of anti-corruption agency	Name and year of law referring to ACA
1	Afghanistan	High Office of Oversight and Anti-Corruption (HOO)	Law on Overseeing the Implementation of the Anti-Administrative Corruption Strategy, 2008
2	Argentina	Oficina Anticorrupción / Anti-Corruption Commission (OA)	Law 25,233 of 1999 (creates anti-corruption agency); Presidential Decree 102/99
3, 4	Australia	(1) Independent Commission against Corruption (ICAC), New South Wales (2) Corruption and Crime Commission (CCC), Western Australia	(1) Independent Commission Against Corruption Act, 1988 (2) Corruption and Crime Commission Act, 2003
5	Austria	Bundesamt zur Korruptionsprävention und Korruptionsbekämpfung / Federal Bureau of Anti-Corruption (BAK)	Law on the Federal Bureau of Anti-Corruption (BAK-G; BGBl. [Federal Law Gazette] I, no. 72/2009; long title in German: Bundesgesetz über die Einrichtung und Organisation des Bundesamts zur Korruptionsprävention und Korruptionsbekämpfung Law, dated 2010, with changes in 2012 and 2013
6	Bhutan	Anti-Corruption Commission (ACC)	Anti-Corruption Act of Bhutan, 2011
7	Botswana	Directorate on Corruption and Economic Crime (DCEC)	Corruption and Economic Crime Act, 1994
8	Cameroon	National Anti-Corruption Commission (CONAC)	Decree No. 2006/088 of 11 March 2006
9	Ethiopia	Federal Ethics and Anti-Corruption Commission (FEACC)	Revised Federal Ethics and Anti-Corruption Commission Establishment Proclamation No. 433/2005 of 2005
10	Haiti	Unité de Lutte Contre la Corruption / Unit for the Fight Against Corruption (ULCC)	Arrêté créant un Organisme à caractère administratif dénommé: Unité de Lutte contre la Corruption (ULCC), 2004
11	Hong Kong	Independent Commission Against Corruption (ICAC)	Hong Kong Basic Law 1997; Independent Commission Against Corruption Ordinance, 1997
12, 13	India	(1) Karnataka Lokayukta (2) Central Vigilance Commission (CVC)	(1) Karnataka Lokayukta Act, 1984 (2) Central Vigilance Commission Act, 2003
14	Indonesia	Komisi Pemberantasan Korupsi / Indonesian Corruption Eradication Commission (KPK)	Undang-undang 30/2002 ttg. Komisi Pemberantasan Tindak Pidana Korupsi (Law 30/2002) on the Indonesian Corruption Eradication Commission, 2002
15	Jordan	Anti-Corruption Commission (ACC)	Anti-Corruption Commission Law No. 62, 2006

16	Kenya	Ethics and Anti-Corruption Commission (EACC)	Ethics and Anti-Corruption Commission Act, 2011; Kenyan Constitution Article 251 (removal from office), 2010
17	Korea, Republic of	Anti-Corruption and Civil Rights Commission (ACRC)	Act on Anti-Corruption and the Foundation of the Anti-Corruption & Civil Rights Commission, 2002
18	Kosovo	Anti-Corruption Agency (ACA)	Law on Anti-Corruption Agency (2009/03-L-159), 2009
19	Latvia	Korupcijas novēršanas un apkarošanas birojs / Corruption Prevention and Combating Bureau (KNAB)	Law on Corruption Prevention and Combating Bureau, 2002; Cabinet Instruction No. 13, adopted 21 October 2008, Procedures by Which to Propose Appointment of the Head of the Corruption Prevention and Combating Bureau
20	Madagascar	Bureau Indépendant Anti-Corruption (BIANCO) / Independent Anti-Corruption Bureau	Décret No. 2004-937 portant création du Bureau Indépendant Anti-Corruption; Loi No. 2004-030 du 9 septembre 2004 sur la lutte contre la corruption (replaced by a new law in December 2014)
21	Malawi	Anti-Corruption Bureau (ACB)	Malawi Corrupt Practices Act, 1995
22	Malaysia	Malaysian Anti-Corruption Commission (MACC)	Malaysian Anti-Corruption Commission Act, 2009 (Act 694)
23	Maldives	Anti-Corruption Commission (ACC)	Anti-Corruption Commission Act, 2008
24	Mauritius	Independent Commission Against Corruption (ICAC)	Prevention of Corruption Act, 2002
25	Moldova	National Anticorruption Centre (NAC) (superseded the Center for Combating Economic Crimes and Corruption)	Law No. 1104-XV of 06.06.2002 on National Anti-Corruption Centre, amended by Law No. 120 of 25.05.2012 and Law No. 106 of 03.05.2013
26	Mongolia	Independent Authority against Corruption (IAAC)	Law of Mongolia on Anti-Corruption, 2006
27	Myanmar	Anti-Corruption Commission	Anti-Corruption Law 2013, Pyidaungsu Hluttaw, Law No. 23
28	Namibia	Anti-Corruption Commission (ACC)	Anti-Corruption Act, 2003
29	Nepal	Commission for the Investigation of Abuse of Authority (CIAA)	Interim Constitution of Nepal, 2007, Article 119
30	Nigeria	Economic and Financial Crimes Commission (EFCC)	Economic and Financial Crimes Commission (Establishment) Act, 2004
31	Pakistan	National Accountability Bureau (NAB)	National Accountability Ordinance, 1999
32	Philippines	Office of the Ombudsman	Ombudsman Act of 1989
33	Rwanda	Office of the Ombudsman	Law No. 76/2013 of 11/9/2013
34	Senegal	Office Nationale de Lutte contre la	Loi No. 2012-30 du 28 Décembre 2012

		Fraude et la Corruption / National Anti-Corruption and Fraud Office (OFNAC)	
35	Sierra Leone	Anti-Corruption Commission (ACC)	Anti-Corruption Act, 2008
36	Singapore	Corrupt Practices Investigation Bureau (CPIB)	Prevention of Corruption Act, 1960, revised 1993
37	Slovenia	Komisija za preprečevanje korupcije / Commission for the Prevention of Corruption (KPK)	Integrity and Prevention of Corruption Act. 2010
38	South Sudan	South Sudan Anti-Corruption Commission (SSACC)	Southern Sudan Anti-Corruption Commission Act, 2009
39	Spain	Oficina Antifrau de Catalunya / Anti-Fraud Office of Catalonia (AOC)	Act 14/2008 of November 5th, on the Anti-Fraud Office of Catalonia (OAC)
40	Sri Lanka	Commission to Investigate Allegations of Bribery or Corruption (CIABC)	Commission to Investigate Allegations of Bribery or Corruption Act, No. 19, of 1994
41	Swaziland	Anti-Corruption Commission (ACC)	Prevention of Corruption Act, 2006
42	Tanzania	Prevention and Combating of Corruption Bureau (PCCB)	Prevention and Combating of Corruption Act, 2007
43	Thailand	National Counter Corruption Commission (NCCC)	Constitution of the Kingdom of Thailand, 2007
44	Togo	Commission Nationale de Lutte contre la Corruption et le Sabotage Economique / National Commission to Combat Corruption and Economic Sabotage (CNLCSE)	Décret No. 2001-160/PR (modifiant et complétant le Décret No. 2001-95/PR du 9 mars 2001 portant création d'une Commission Nationale de Lutte contre la Corruption et le Sabotage Economique, 2001
45	Yemen	Supreme National Authority for Combating Corruption (SNACC)	Anti-Corruption Law No. (39), 2006
46	Zambia	Anti-Corruption Commission (ACC)	Anti-Corruption Act, 2012

## Annex 2. Comparative matrix of eligibility criteria

*Note:* Most of the language in this table is drawn directly from the legislation in question; some wording may be ambiguous. The countries omitted from this list did not include any provisions on eligibility criteria in their ACA legislation.

Country	Age	Nationality/residence	Professional experience	Minimum education	Political affiliation/ public office	Minimum years of experience	Additional criteria
Afghanistan				Bachelor's degree	No party membership during term		Must also meet Civil Servants Law requirements.
Argentina	Minimum 30	Citizen of Argentina	6 years' experience in law, prosecution, or the judiciary			6	
Australia – Western (CCC)			Has served or qualifies for appointment as judge of a State Supreme Court, the High Court, or Federal Court of Australia				Person who is or has been a police officer is not eligible.
Austria			Specific experience in preventing and tackling corruption, both nationally and internationally	University degree in law or economics/business administration		5	Person who is or has been a member of the federal government, a provincial/state government, the National Council, the Landtag (State Council), or Local Councils within the last 6 years may not be appointed.
Bhutan		Natural-born citizen of Bhutan		Formal university degree	No political affiliation	25	Person must not: be married to a person who is not a citizen of Bhutan; have been terminated or compulsorily retired from the government or public

									service on disciplinary grounds; have been convicted of a criminal offence and sentenced to imprisonment; be in arrears on taxes or other dues to the government [or] public entity; hold any office for profit whether public or private or in civil society organisations; have been disqualified under any other laws.
Cameroon	Commissioners must possess recognised professional experience in areas falling within the Commission's remit.								
Hong Kong						Chinese citizens who are permanent residents of the Region with no right of abode in any foreign country and have ordinarily resided in Hong Kong for a continuous period of not less than 15 years			
India – Lokayukta						Has held the office of judge of the Supreme Court or chief justice of a High Court			
India – Central Vigilance Commission						(a) Has been or is in an All-India Service or in any civil service of the Union or in a civil post under the Union, having knowledge and experience in matters relating to vigilance, policy making, and administration, including police administration; or (b) Has held office or is holding office in a corporation established by or under any Central Act, or a government company owned or controlled			Among the Central Vigilance Commissioner and the Vigilance Commissioners, not more than 2 persons shall belong to the category of persons referred to either in clause (a) or clause (b). [specified at left in Profession column]

Indonesia	40-65	Citizen of Indonesia	by the Central Government, and persons who have expertise and experience in finance, including insurance and banking, law, vigilance and investigations	Law, economics, finance, or banking	Undergraduate degree	During term of appointment to the KPK, commissioners must give up all other offices and not pursue their profession Does not hold office in a political party	15	Must believe in an almighty god, be physically and mentally fit, declare his/her wealth in accordance with prevailing legislation, have never acted improperly, be competent and honest, have high moral integrity, and enjoy a good reputation.
Jordan	The Commission shall be managed by a Board consisting of a chairperson and 6 members known for their fairness, integrity, neutrality and expertise, not holding public office [...].							
Kenya		Citizen of Kenya		Has knowledge and experience in any of the following fields: ethics and governance, law, public administration, leadership, economics, social studies, audit, accounting, fraud investigation, public relations and media, or religious studies or philosophy; and has had a distinguished career in the respective field	Degree from a university recognised in Kenya	Has not been member of a governing body of a political party since the last 2 elections	15	Must meet the requirements of Chapter 6 of the Constitution, which are quite detailed on the appropriate conduct within office; must not be an undischarged bankrupt, have been convicted of a felony, or have been removed from public office for contravening the provisions of the Constitution or any other law
Korea, Republic of				(1) Person whose term of service as associate professor (or corresponding position thereto) or higher either at college or at an authorised research institute is 8 years or more; (2) Person whose term				Must be deemed capable of fairly and independently performing duties with respect to complaints and anti-corruption.

			<p>of service as judge, public prosecutor or attorney-at-law is 10 years or more; (3) Person who was or is in office as Grade III public official or higher; (4) Person whose term of service as certified architect, certified tax accountant, certified public accountant, professional engineer, or patent attorney is 10 years or more; (5) Person whose term of service as member of any Local Ombudsman under Article 33(1) is 4 years or more; and (6) Other persons of high social reputation who have knowledge and experience on administration and who are recommended by (a) non-governmental organisation(s).</p>				
Kosovo		Citizen of the Republic of Kosovo having permanent residence in Kosovo		4-year university diploma or master's diploma	5		Must not have been convicted of a criminal offence and must have high moral integrity.
Latvia	Not reached retirement age	Citizen of Latvia	Work experience appropriate for the position	Higher education			<p>Must be fluent in Latvian and at least 2 foreign languages.          Must not have been: punished for a criminal offence (regardless of the criminal record having been set aside or extinguished); convicted of a criminal offence, releasing from a punishment; held criminally liable except in case where criminal proceedings were terminated on a vindictory basis; a staff</p>

							employee or a freelance employee of the Ministry of Defence of the USSR or State Security Committee of the USSR or Latvian SSR or the state security service, intelligence, or counterintelligence service of the states other than the Member States of the European Union or North Atlantic Treaty Organisation, or an agent, resident, or safehouse keeper; a member of an organisation prohibited by law or by court adjudication. Must comply with the requirements of this Law to receive the special permission for access to a State secret.
Malawi	No person shall qualify for appointment as director unless he is of high integrity and possesses qualifications and training necessary for the performance of the duties of that office.						
Maldives	Minimum 25	Citizen of Maldives				Does not hold an elected office or political position under the Constitution or any law of the Republic of Maldives Is not a member of a political party or engaged in political activities Is not in the employment of the Government or any other party	Qualifications required during tenure: must be a Muslim; must not be convicted during the past 5-year period of an offence for which a hadd is prescribed in Islam; must not be convicted of obtaining an undue advantage through the influence of position, or bribery, or fraud; must not have been convicted of a criminal offence and sentenced to a term of more than 12 months, unless a period of 5 years has elapsed since the release or pardon for the

Mauritius									10	offence has been granted.
Moldova					Has served as a judge of the Supreme Court; has served as a magistrate in Mauritius for not less than 10 years; is, or has been, a practising barrister or law officer for not less than 10 years; or has served in an anti-corruption agency in another country at an acceptable level of seniority	Full legal capacity, higher legal studies	Legal domain	Not a member of a political party over the past 2 years	10	Must have no criminal antecedent; know the state language; and be medically able to take over his responsibilities.
Mongolia					Lawyer, at least 15 years of prior government service; relevant managerial and professional experience			Has not held a political position for at [least] 5 years	15	For IAAC staff in general: an officer of the Anti-Corruption Agency shall be a citizen of Mongolia with no criminal record, no record of violating the code of ethics or of disciplinary penalties in the course of serving as a government officer; has at least a bachelor's degree, and meets requirements associated with professional knowledge and skills.
Myanmar										Must be honest and fair. Not eligible is a person who is performing the duties relating to legislation, executive, and judiciary; is regarded as insane under any existing law; is a religious person [probably meaning a representative of

							<p>faith]; is punished with imprisonment in accord with the order of any court; is regarded as a person without having the right for ballot casting and election; is insolvent; is punished due to committing bribery or removed or dismissed from duty.</p>
Namibia	Citizen of Namibia				<p>Not a member of the National Assembly or National Council; not a member of a regional council or a local authority council</p>		<p>President may nominate for appointment as director or deputy director any person whom the president considers suitable and who is of good character and high integrity and possesses knowledge or experience relevant to the functions of the Commission. Must not be an unrehabilitated insolvent or has been convicted of theft, fraud, forgery, or uttering a forged document, perjury or any other offence involving dishonesty, or any other offence for which a sentence of imprisonment without the option of a fine has been imposed, excluding an offence of a political nature committed before the date of Namibia's independence.</p>
Nepal	Minimum 45		Field of accounting, revenue, engineering, law, development or research, and is a distinguished person	Bachelor's degree from a university recognised by the government of Nepal	Not a member of any political party immediately before appointment	20	Must have a high moral character.

Nigeria			Serving or retired member of any government security or law enforcement agency not below the rank of assistant commissioner of police or equivalent			15	
Pakistan			Retired chief justice or judge of the Supreme Court, or chief justice of a High Court; or retired officer of the Armed Forces of Pakistan equivalent to the rank of a lieutenant general; or retired federal government officer in BPS-22 or equivalent				
Philippines	Minimum 40	Natural-born citizen of the Philippines	Member of the Philippine Bar; the ombudsman must have, for 10 years or more, been a judge or engaged in the practice of law in the Philippines		Has not been candidate for any elective national or local office in the immediately preceding election, whether regular or special	10	Must be of recognised probity and independence.
Rwanda		Rwandan national					Must be a person of integrity, known for foresight and having competence necessary to discharge his/her duties
Senegal			Magistrates; senior civil servants (level A1); academics; representatives of civil society and the corporate sector	Master's degree for those who are not public officials		10	
Sierra Leone			Legal practitioner having not less than 10 years' practice in the profession with proven managerial experience and of conspicuous probity			10	Deputy commissioner shall have proven knowledge, ability, and experience of at least 10 years in accounting, banking, financial services, or any other relevant profession, and shall be a person of

Slovenia		Citizen of the Republic of Slovenia		Completed higher education under second-level study programme or education that corresponds to the second level of higher education under the law governing higher education				conspicuous probity. Must not have been sentenced to imprisonment by way of a final judgment; must be persons for whom it may reasonably be concluded that, in respect of their previous work, conduct, or behaviour, they will perform their function in the Commission by observing the law and pursuant to the rules of the profession.
South Sudan	Minimum 35	"a Sudanese citizenship"		Possesses skills and knowledge relevant to the work of the Commission or qualifications deemed relevant to the position	Not employed in the civil service or any other branch of government; not an office holder or employee of a political party; does not hold elected position at any level of government			Must have high moral reputation and integrity; possess the necessary qualifications, expertise, and experience in matters related to exposing and preventing corruption and promoting the integrity of government institutions, having regard to gender balance; be of sound mind and high character; not be an undischarged bankrupt or insolvent; and not have been convicted of an offence involving dishonesty or moral turpitude.
Spain – Catalonia								Citizens of legal age enjoying full civil and political rights and fulfilling the conditions of suitability, probity, and professionalism necessary for exercising the post. Must be resident in Catalonia. The director of the Anti-Fraud Office cannot be affiliated to any political party, trade union or business association.
Sri Lanka			Retired judge of the Supreme Court or Court of Appeal					
Swaziland			Qualified for appointment as judge of the High Court					
Yemen	Minimum 40	Yemeni nationality		University degree or higher				Must never have been subject of corruption allegations or



## References

- Butt, S. 2011. "Anti-Corruption Reform in Indonesia: An Obituary?" *Bulletin of Indonesian Economic Studies* 47 (3): 381–94.
- De Sousa, L. 2010. "Anti-Corruption Agencies: Between Empowerment and Irrelevance." *Crime, Law and Social Change* 53 (1): 5–22.
- Doig, A., D. Watt, and R. Williams. 2005. "Measuring 'Success' in Five African Anti-Corruption Commissions." U4 Report 2005:1. Bergen, Norway: U4 Anti-Corruption Resource Centre.
- Ginsburg, T. 2003. *Judicial Review in New Democracies: Constitutional Courts in Asian Cases*. Cambridge: Cambridge University Press.
- Gloppen, S. 2014. "Courts, Corruption and Judicial Independence." In *Corruption, Grabbing and Development: Real World Challenges*, edited by T. Søreide and A. Williams, 68–79. Cheltenham, UK: Edward Elgar.
- Hanni, V. 2007a. "Calon pimpinan KPK: Panitia seleksi akui." *Kompas* (Jakarta), 31 August.
- . 2007b. "Seleksi pimpinan KPK: Mencari sang pendekar antikorupsi." *Kompas* (Jakarta), 29 June.
- Heilbrunn, J. R. 2004. *Anti-Corruption Commissions: Panacea or Real Medicine to Fight Corruption?* World Bank Institute Working Paper 37234. Washington, DC: World Bank.
- Jakarta Statement on Principles for Anti-Corruption Agencies*. Jakarta, 26–27 November 2012. <http://bit.ly/1BNbvjn>.
- Johnston, M. 2011. "First, Do No Harm – Then, Build Trust: Anti-Corruption Strategies in Fragile Situations." Background paper for *World Development Report 2011*. Washington, DC: World Bank.
- Kompas*. 2003. "Seleksi calon pimpinan Komisi Pemberantasan Korupsi. Panitia seleksi harus melakukan jemput Bola." 29 November, 8.
- . 2007. "Pencalonan pimpinan KPK. Pansel ketemu lembaga swadaya masyarakat." 21 June, 3.
- Kuris, G. 2012. *Surmounting State Capture: Latvia's Anti-Corruption Agency Spurs Reforms, 2002–2011*. Innovations for Successful Societies case study. Princeton, NJ: Princeton University.
- . 2013. *Toothless but Forceful: Slovenia's Anti-Corruption Watchdog Exposes Systemic Graft, 2004–2013*. Innovations for Successful Societies case study. Princeton, NJ: Princeton University.
- . 2014. *From Underdogs to Watchdogs: How Anti-Corruption Agencies Can Hold Off Potent Adversaries*. Innovations for Successful Societies case study. Princeton, NJ: Princeton University.
- OECD (Organisation for Economic Co-operation and Development). 2008. *Specialised Anti-Corruption Institutions: Review of Models*. Anti-Corruption Network for Eastern Europe and Central Asia. Paris: OECD.

PGRI (Partnership for Governance Reform in Indonesia). 2007. *Laporan Tahapan Proses Panitia Seleksi Pimpinan KPK Periode 2007–2011*. Jakarta.

Recanatini, F. 2011. “Anti-Corruption Authorities: An Effective Tool to Curb Corruption?” In *International Handbook on the Economics of Corruption, Volume Two*, edited by S. Rose-Ackerman and T. Søreide, 528–69. Cheltenham, UK: Edward Elgar.

Schuette, S. A. 2011. “Appointing Top Officials in a Democratic Indonesia: The Corruption Eradication Commission.” *Bulletin of Indonesian Economic Studies* 47 (3): 355–79.

SIGAR (Office of the Special Inspector General for Afghanistan Reconstruction). 2009. *Afghanistan's High Office of Oversight Needs Significantly Strengthened Authority, Independence, and Donor Support to Become an Effective Anti-Corruption Institution*. SIGAR Audit 10-2. <http://bit.ly/1A3Fltb>.

Slotnick, E. 1984. “Judicial Selection Systems and Nomination Outcomes: Does the Process Make a Difference?” *American Politics Quarterly* 12 (2): 225–40.

UNDP (United Nations Development Programme). 2005. *Institutional Arrangements to Combat Corruption: A Comparative Study*. Bangkok.

Wanjala, S. C. 2012. *Fighting Corruption in Africa: Mission Impossible?* International Anti-Corruption Summer Academy. Laxenburg, Austria: IACA.



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#### INDEXING TERMS

Anti-corruption agency,  
appointment,  
recruitment,  
removal,  
leadership

#### FOTO

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“A fish rots from the head” is the saying when an organisation’s leadership is seen as responsible for the unethical behaviour of its personnel. Undue external interference with an anti-corruption agency (ACA) is likely to target its top officials; if co-opted or corrupted, they can do serious damage to the effectiveness and reputation of an ACA. Appointment and removal processes affect the actual and perceived impartiality of ACAs. If an ACA head can be appointed and removed at will by a political stakeholder, the appointee has an incentive to defer to the will of the appointer. Some countries have therefore made such appointments the shared responsibility of several institutions to avoid potential misuse of the ACA by the government or a particular political group. In addition to who has responsibility for appointments, the criteria for eligibility and the transparency of the selection criteria and process also matter. The inclusion or exclusion of a certain group of candidates can have an effect on the actual and perceived impartiality, competence, and responsiveness of the head of the agency. The inclusion of non-state actors, for example, is likely to gain more public trust than limiting candidates to party office holders.

Removal procedures can be as important as appointment procedures. Security of tenure needs to be weighed against accountability. The implicit or explicit threat of removal can be a powerful incentive for the ACA head to align with specific interests. Removal procedures become important when those whose interests are threatened try to influence and – if unsuccessful – remove key decision makers. Removal, however, can also be needed to replace leaders who are corrupt, politically driven, or simply incompetent. It is therefore important to outline clearly the removal procedures, keeping in mind both the independence of the agency and the accountability of top officials.