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AN EVALUATION OF NATIONAL INTEGRITY SYSTEMS (NIS) FROM A HUMAN RIGHTS PERSPECTIVE

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BACKGROUND

1. The International Council is conducting a research project that analyses the relationship between human rights and corruption. The project is aimed at improved networking and knowledge exchange on various aspects particularly pertinent to this relationship. The Basel Institute on Governance has been requested to research and write a paper on National Integrity Systems (NIS) and Human Rights. In particular, following questions are to be addressed:
 - (i) What are the strengths and weakness of NIS from a human rights perspective?
 - (ii) What can NIS do that a human rights framework cannot?
 - (iii) How might NIS complement a human rights approach?; and
 - (iv) How can human rights principles and methods complement NIS?
2. The paper should include following inquiries:
 - describe and evaluate the concept of national integrity system (NIS);
 - evaluate the effectiveness of policy responses to combat corruption by strengthening NIS;
 - compare a NIS approach with a human rights approach to combating corruption;
 - identify strengths and weaknesses of each system in the fight against corruption;
 - evaluate the advantages of a NIS framework to combat corruption;
 - assess how NIS could complement a human rights approach;
 - assess how human rights principles and methods could complement NIS.

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1. A HUMAN RIGHTS-BASED APPROACH TO DEVELOPMENT

1.1. Principles

3. According to the Declaration on the Right to Development, adopted by the General Assembly in 1986, development is defined as a “*comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population of all individuals on the basis of their active, free and meaningful participation in development and the fair distribution of benefits resulting thereof*”. Referring explicitly to the Universal Declaration of Human Rights it stipulates that “*everyone is entitled to a social and international order in which the rights and freedoms set forth in that declaration can be fully realized*”¹. The need for a declaration on development stems from the concern that indivisible human rights and fundamental freedoms are being denied to human beings and to societies. Hence, the promotion of and respect for certain human rights is seen to be prerequisite for the fulfilment of development. More pertinently, in Article 1 the Declaration confirms that “*the right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized*”.
4. A human-rights based approach to development emanates from this principle. As the UNHCHR states, it is “*normatively based on international human rights standards and operationally directed to promoting and protecting human rights. Essentially, a rights-based approach integrates the norms, standards, and principles of the international human-rights system into the plans, policies and processes of development*”² The UN are very clear about the fact that the primary responsibility for the promotion and protection of human rights lies with the State³. However, human rights are expressed in relation to norms and principles of human dignity, and at the centre of human rights and human development is the human person. To advance the mainstreaming and implementation of the human rights-based approach to development (HRBA) in all areas of development cooperation and programming the UN System has agreed on a Common Understanding the delineate the key principles.⁴

1.2. Policies and Programming

5. To operationalise a human rights-sensitive approach into development policies and programming, the UN has developed the concept of right-holders (or claim-holders) on the one hand, and duty-bearers on the other hand. Right holders refers to people, institutions, organisations or companies who hold the legal entitlement of a right, and correspondingly, duty-bearers related to those who are under a duty to take appropriate measures to uphold this legal obligation. These can be both positive obligations, such as to protect or to provide, as well as negative obligations, such as to refrain or abstain from violations.⁵ The UNDP, which is charged by the UN with the operationalisation of the human-rights approach in development work, puts this concept on centre-stage of development work, as following statement shows: “*Human rights-*

¹ All citations taken from the preamble of the Declaration on the Right to Development, adopted by the General Assembly resolution 41/128 of 4 December 1986.

² Cf the first paragraph of the UNHCHR website www.unhchr.ch/development/approaches-04.html (emphasis added; last accessed 18 May 2007)

³ See for instance Article XX of the Declaration on the Right to Development.

⁴ See the „UN Common Understanding on the Human Rights-Based Approach to Development, 7 May 2003, Stamford, Connecticut“. For a synopsis on the current experiences of the UNDP with regard to human rights and development see also *Summary Report: Working Group Meeting: Linking MDGs and Human Rights: Theoretical and Practical Implications*, UNDP Oslo Governance Centre, 18-19 September, 2006.

⁵ UNDP (2005). Human Rights in UNDP Practice Note, April 2005, p. 7ff.

based development strategies will, above all, depend on the determination, acceptance and implementation of the interrelated aspects of duty-bearers to fulfil their obligations, and of claim-holders to fulfil their rights.’⁶

6. Beyond the identification of rights- and duty bearers as main subjects of development, a human rights approach to development makes further key lateral principles explicit:
 - *express linkage to rights*: there can be no trade-off between development and rights, e.g. the prioritisation of economic development over political rights. The full range of indivisible and interdependent rights are explicitly considered, including civil, cultural, economic, political and social rights.
 - *accountability*: the identification of right-holders and their entitlements and the corresponding duty-bearers and their obligations aims at translating universal standards into locally determined benchmarks for measuring progress and enhancing transparency and responsibility, through appropriate laws, institutions and procedures.
 - *empowerment*: emanating from the foundations of human development based on opportunities, as elaborated in the first Human Development Report, the goal of development is both intrinsic and instrumental: human persons and communities should have the power, capacity, capability and access to influence their own destinies.
 - *participation*: the human person as a subject being key to a rights-based approach, participation becomes a central element and objective of development. The Declaration on the Right to Development states that participation should be “active, free and meaningful”, which clearly delineates that individuals and groups should be empowered agents of development, and not objects of external and imported techniques and models.
 - *non-discrimination and attention to vulnerable groups*: human rights are essentially based on principles of equality and equity. This premise implies that particular attention must be paid to the power dynamics of development, especially where it is manifest in terms of discrimination, marginalisation and vulnerability.
7. This normative frame informs and defines a set of practical tools aimed at more strategic interventions, better analysis, and not least enhanced ownership by the people. Moreover, the lateral emphasis on accountability in decision-making and policy-making processes is ultimately a medium through which to achieve greater sustainability and equity.
8. In their Human Rights Practice Note, which provide operational guidance to their staff, the UNDP spell out their vision of an integral HRBA: *“Human rights-based approaches promote social transformation by empowering people to exercise their “voice” and “agency” to influence the processes of change. It strengthens democratic governance by supporting the state to identify and fulfil its responsibilities to all under its jurisdiction. And gives substance to universal ethics by translating the principles of international declarations and conventions into entitlements and concrete action.”* (UNDP Human Rights Practice Note 2005, p. 15)
9. With this ultimate aim of improving the enjoyment of human rights wherever development interventions are taking place, the UN has set a benchmark by integrating a human rights-sensitive approach into both policy and practice. Ideally, any intervention would be preceded by a multi-disciplinary assessment of people’s full range of rights. Obviously, this entails capturing not only the outcomes of development processes, but also the process itself. Here, the UNDP is putting much work into developing both outcome and process indicators and baselines that illuminate the degree of realisation of human rights, with particular regard for the most vulnerable and marginalised groups of society.
10. An important tool is the HRBA Checklist for Programme Staff⁷, developed to guide the UN’s staff in assessing the human rights-situation in a country, region or sector and identifying

⁶ UNDP (2005). Human Rights in UNDP Practice Note, April 2005, p. 23.

priority areas of intervention. The checklist is not intended as an exhaustive questionnaire, but as a crisp and functional support for mainstreaming human rights and assist country offices in the assessment of human rights-based reviews. The priority issues of the UN are reflected in the sections the checklist is comprised of:

1. Country Context and UNDP Programme
 2. Excluded and Vulnerable Groups
 3. Stakeholder Capacity
 4. Country Programme and Project Process (Conduct)
 5. Country Programme and Project Outcome (Results)
11. More recently, the UNDP has published a User's Guide to Human Rights Indicators⁸, which provides a comprehensive overview, an in-depth discussion of existing Human Rights Indicators and their application in human rights based programming. In particular, the guide specifies critical areas for using indicators:
- i) Understanding the human rights situation at the country level through the identification and use of indicators that can be used to provide an assessment of baseline human rights situation.
 - ii) Understanding the capacities of individuals and groups as 'rights holders' to claim their rights as well as the capacities of state institutions as 'duty bearers' to promote and protect human rights on the ground.
 - iii) Identifying and using indicators of ensuring the incorporation of human rights principles in the design, implementation and monitoring of UNDP programmes.
 - iv) Identifying and using indicators to determine the likely impact of programmes on furthering human rights in a country.
12. The mainstreaming of the HRBA principles and guidelines are being catalysed by HURIST⁹, a joint programme by UNDP and OCHCR, who are also in the process of developing and refining the National Human Rights Action Plans. Several such plans have already been undertaken, and lessons learned from them. Underlying the Action Plans is the conviction that they are not an objective in themselves, but a tool for addressing the human rights situation.¹⁰

2. THE NATIONAL INTEGRITY SYSTEM

2.1. NIS: A systemic approach to integrity and the control of corruption

13. The National Integrity System (NIS) is a comprehensive approach, developed by Transparency International, the leading international anti-corruption NGO, in the late 90s to assess the multiple causes and types of corruption in a country, and on this basis to enable more tailored and context-relevant reform processes.¹¹ The development of the NIS as a concept was based on the realisation that corruption in a country is very rarely a one-dimensional phenomenon, but is rooted in interdependent and dynamic political, administrative, social, and economic components. Only the deeper understanding of the whole system informing and shaping

⁷ Cf UNDP (2003). Human Rights-Based Reviews of UNDP Programmes – Working Guidelines. June 2003, p. 11.

⁸ UNDP (2006). Indicators for Human Rights Based Approaches to Development in UNDP Programming: A User's Guide. March 2006.

⁹ For further information see <http://www.unhcr.ch/development/hurist.html> (last accessed 20 May 2007).

¹⁰ This information is based on the facts available from HURIST's website (see preceding footnote) and from email-correspondence in mid-May 2007 with Emilie Filmer-Wilson, Human Rights Expert at the UNDP Oslo Governance Centre.

¹¹ See Transparency International (2000). *Source Book – Confronting Corruption: The Elements of a National Integrity System*. (Authored by Jeremy Pope).

corrupt practices will allow the design of meaningful and sustainable anti-corruption mechanisms.

14. The fundamental premise of the NIS approach is that corruption promotes the private interests of those in control rather than the public interest of society at large. A system in which power is monopolised and rules are subject to autocratic decisions is inherently conducive to such a distortion of interests and the abuse of the public-private divide, as there are no counterbalancing weights or watchdogs that hold power-bearers responsible and accountable. On the other hand, a national integrity system in which power is dispersed, where different state agencies and actors are separately accountable, and where the relationship between state and society is governed by the rule of law, transparency, and accountability, the systemic distortion of interests is inherently easier to prevent or control. The establishment and maintenance of integrity in public life and public service becomes key to uphold patterns of accountability, fairness and transparency.
15. Hence, the promotion of a NIS seeks to facilitate the transition from a system of vertical, top-down responsibility to a system of horizontal, democratic accountability, that shape and inform a configuration of agencies and rules designed to check abuses of public power. Although the prevention and control of corruption is the key objective, it is not seen as an end in itself. The prevention of corruption through the support of a NIS is embedded in the pursuit of a fairer distribution of and access to public resources, including public services, infrastructure, jobs and political decision-making processes. Understanding the costs of corruption not merely as isolated economic or political variables, but in terms of their impact on society, reforms that facilitate the transition to a more effective and equitable government are subsequently aimed at a systemic level, and not primarily at exposing or sanctioning individuals.

2.2. The NIS in detail

16. The National Integrity System is devised to explicitly incorporate the integrity context and institutional environment of corruption. The concept as developed in Transparency International's Source Book takes this premise a step further by developing a framework of analysis and practical guidelines along which reforms can be initiated. In TI's own words, the National Integrity System refers to following principles and institutions:

“The NIS consists of the key institutions, laws and practices that contribute to integrity, transparency and accountability in a society. When it functions properly, the NIS combats corruption as part of the larger struggle against abuse of power, malfeasance, and misappropriation in all its forms. The NIS approach provides a framework with which to analyse both the extent and causes of corruption in a given national context, as well as the adequacy and effectiveness of national anti-corruption efforts. By diagnosing the strengths and weaknesses of a particular integrity system, an evaluation based on the NIS can help inform anti-corruption advocacy and reform efforts.

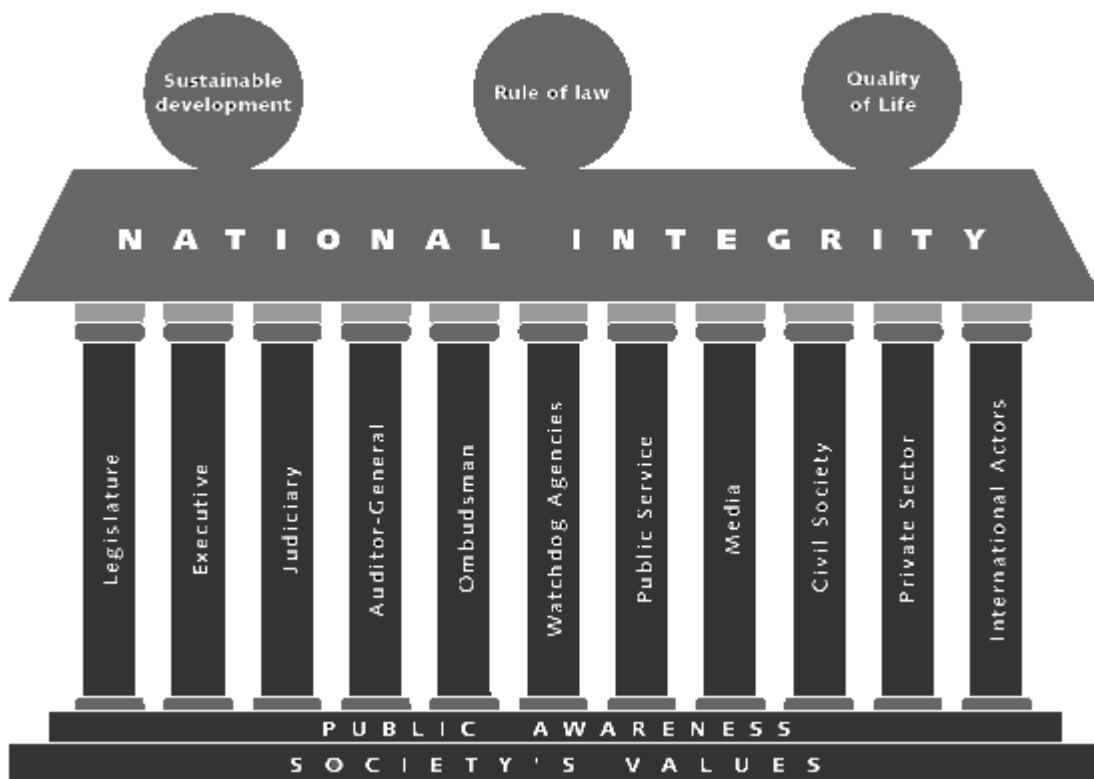
The main ‘pillars’ of the NIS are considered to be the following:

- Executive
- Legislature
- Political Parties
- Electoral Commissions
- Supreme Audit Institution
- Judiciary
- Public Sector

- Police and Prosecutors
- Public Procurement
- Ombudsman
- Anti-corruption agencies
- Media
- Civil Society
- Private Sector
- Regional and Local Government
- International Institutions”¹²

17. These institutional pillars form the central elements of the concept of a NIS. Famously, the NIS was visualised as a Greek Temple, where the above mentioned pillars form the carrying structure which rest on a double foundation of society’s values and public awareness. The roof of the temple is national integrity, on which three balls are balanced, namely the quality of life, the rule of law, and sustainable development.

Figure 1. The institutional pillars of the national integrity system



Source: Transparency International Integrity Source Book, p. 35.

¹² Taken from Transparency International’s website under http://www.transparency.org/policy_research/nis/about_nis, last accessed 11 May 2007.

18. The image of the temple emphasises the importance of mutual interdependency between the institutions of society: if one pillar is much taller or much smaller than others, then the overarching objectives and national integrity will be at risk. The image of the temple was not devised as a blueprint, but as an adaptable model capable of incorporating the relevant pillars of any country under scrutiny without losing focus of the core integrity structure.
19. Although these institutional pillars may form the carrying structure of the NIS, they are complemented by rules and practices which, according to TI's Source Book, "*comprise the 'toolkit' employed by, or underpinning, the various institutions*" (TI Source Book, p.37). More generically, the rules and practices provide the basic principles and operational framework of accountability and transparency within and between the various institutions and sectors. An example of these are given in the Source Book, as Table 1 illustrates:

Table 1 The Rules and Practices Pillars

<i>Institutional pillar:</i>	<i>Corresponding core rules/practices:</i>
Executive	Conflict of interest rules
Legislature / Parliament	Fair elections
Public Accounts Committee (of legislature)	Power to question senior officials
Auditor General	Public reporting
Public service	Public service ethics
Judiciary	Independence
Media	Access to information
Civil society	Freedom of speech
Ombudsman	Records management
Anti-corruption or watch-dog agencies	Enforceable and enforced laws
Private sector	Competition policy, incl. public procurement rules
International community	Effective mutual legal/judicial assistance

Source: Transparency International Source Book, p.37.

2.3. The National Integrity Reform Process

20. The core of Transparency International's approach to NIS is essentially one of engagement, interaction and cooperation, whereby the National Chapters of TI play a key role in driving and shaping this process. The policy of TI is that "*National Chapters work to build coalitions to strengthen integrity systems in their respective countries. A framework is set out in the National Integrity Source Book.*"¹³
21. Originally, one of the characteristic features of the NIS approach were the so-called National Integrity Workshops. Based on the premise that the social dynamics of a country are best understood by the people of that country, that integrity is a lateral issue to all stakeholders, and that meaningful and deep reform can be achieved only if it is driven and owned by local participants, National Integrity Workshops were originally devised as a tool to catalyse a participatory assessment and reform of a country's NIS. Contributions from outsiders are only envisaged as the facilitation of the reform process and as part of the reflexive learning process and wider dissemination. In other words, the NIS process was essentially conceived as a

¹³ See the caption "Building National Integrity Systems" on TI's approach to fighting corruption on their website under http://www.transparency.org/about_us/approach. (last accessed 16 May 2007).

dynamic and inclusive reform process; more to the point, it was conceived as enabling “*a coalition [that is] built around a consensus in support of concerted action*”¹⁴ as prerequisite for sustainable change.

22. This approach was practiced with great initial success in the mid-to late Nineties, where it was used to catalyse the establishment of new chapters, particularly in African countries.¹⁵ However, in the intervening years the enthusiasm has waned, partly because the acceptance of anti-corruption policies has become more widespread, partly because the impact of the National Integrity Workshops has not been as sustainable as hoped for: although corruption control may feature high on many political agendas, the generation of a broad national coalition and consensus on priority actions has not sufficed to significantly alter corruption-prone structures and institutions. In the meantime, for the sake of focusing scarce resources on maximal impact, Transparency International has shifted its primary efforts to the diagnosis of National Integrity Systems. In particular, much work has been done on the measurement and assessment of the institutional causes of corruption, with the objective of generating more evidence-based country profiles and identifying operational points of engagement. These reports are the main product of the NIS approach to combating corruption, and they are known as the NIS country studies.

2.4. The NIS country studies

23. In the seven years since the publication of the Source Book, Transparency International has greatly advanced the evidence and methodology based on the NIS approach. Since 2001, country-studies are being conducted systematically in all regions of the world. The research has been prolific. Since 2001, 13 country surveys have been conducted in Africa, 14 in the Americas, 10 in Europe and Central Asia, and 30 in Asia and the Pacific. It is TI's policy that they are all conducted by national consultants, and that they are all made public on their website¹⁶. The surveys are carried out with the following objectives:
- to develop a baseline through the factual assessments of national integrity systems;
 - to provide a qualitative assessment of anti-corruption programmes;
 - and to facilitate cross-country comparisons and comparisons over time.
24. The provision of strong empirical overviews as well as benchmarking constitute key dimensions of the evaluations, which are embedded in a diagnosis of the main corruption risks in a country and an assessment of the integrity and capacity of the institutional pillars and their wider environment. The methodology is mainly qualitative in nature, derived from desk research, interviews and focus-group discussions.¹⁷
25. The surveys are semi-standardised in that they are guided by two key documents, a) the Terms of Reference and b) the Questionnaire Guidelines for the National Integrity System Country Studies¹⁸. The ToRs lay out the frame of reference for the country studies, with regard to the background and the methodology of the surveys (as described above) as well as the formal

¹⁴ See the Source Book, p. 38.

¹⁵ For instance in Tanzania in 1996, in Ghana in 1998 (<http://www.transparency.org/newsletters/98.4/natchapt.html#Ghana>) or in Malawi in 1996 and 2000 (cf. www.tkenya.org/documents/CoalitionBuildinginMalawi.doc)

¹⁶ Cf. http://www.transparency.org/policy_research/nis/regional (last accessed 16 May 2007) for all available country studies.

¹⁷ For a summary showing how the NIS surveys and methodology fit into TI's other diagnostic tools, as well as a discussion of other tools and approaches, see UNODC 2007. Workshop on measuring and monitoring corruption and anti-corruption. Sofia June 17-18, 2005.

¹⁸ Both can be downloaded from http://www.transparency.org/policy_research/nis/methodology (last accessed 16 May 2007)

arrangements between TI and the authors. The main report covers the comprehensive assessment of both the country as well as the corruption profiles, and an evaluation of the core NIS pillars, to conclude with the recommendation of priority areas of action, including the identification of areas of further research, best practices or donor support and cooperation.

26. The purpose of the Questionnaire Guidelines is to structure the evaluation of the NIS, and provide a detailed overview over each NIS pillar and the linkages between them. The questions are organised in following categories:
 1. Role(s) of institution/sector as pillar of NIS
 2. Resources / structure
 3. Accountability
 4. Integrity mechanism
 5. Transparency
 6. Complaints / Enforcement mechanism
 7. Relationship to other NIS pillars.
27. Each category is then subsumed under the different pillars of the Integrity System, for which more detailed and focused questions are outlined. These detailed questions are organised in a way to capture both the laws and rules in place as well as the actual (informal or unofficial) practices taking place, the assessment of which feeds into the priorities and recommendations at the end of the NIS country report.

3. THE NIS COUNTRY STUDY REPORTS

28. In this section, the country surveys outlined above will be introduced and discussed both from a corruption-perspective as well as from a HRBA to development. The intention is to provide an illustration of how the NIS is applied in practice. The country studies selected are Tanzania (2003) and China (2006)¹⁹; although the two reports are by no means representative for all NIS country studies, they provide solid and, in the case of China, stark illustration of the strengths and weaknesses of a NIS from a human rights-sensitive standpoint. Albeit the two surveys lie three years apart, and are from very different regions, the structured NIS country survey approach has rendered the countries highly comparable: the backbone of the surveys is identical, namely a detailed assessment of the institutional and procedural pillars of the NIS of the country in question.
29. The discussion of the country surveys shall proceed in three steps: first the key findings shall be summarised; second the findings shall be assessed in terms of the effective control and prevention of corruption; and thirdly the reports shall be scrutinised from a human rights-perspective. Drawing from the key tenets and principles of a HRBA, following criteria will inform the assessment:
 - Express linkage to rights
 - Accountability
 - Empowerment
 - Participation
 - Non-discrimination and attention to vulnerable groups

¹⁹ Tanzania was chosen as it can be seen as a proxy for typical problems that many African countries face, and also because the author of this chapter is very familiar with the integrity system. China was chosen for the opposite reason, because it is an extraordinary report on one of the most important and, in terms of corruption, under-researched countries in the world.

3.1. Tanzania

3.1.1. Summary of Findings

30. Put in a nutshell, the survey comes to the conclusion that although, commendably, corruption and good governance rate high on the political agenda of Tanzania, *“policies, institutions and reforms are only as good as the change they manage to bring about in the lives of ordinary citizens”* (p. 16). The survey is based on a detailed analysis of the key institutions of the national integrity system, including the police and prosecutors, local and regional government, as well as civil society, and gives a concise overview over anti-corruption activities of the government and donors. It proceeds to assess both the progress made as well as the key issues of how the NIS works in practice, taking into account the premise that a NIS is not a static model, but a live, dynamic configuration. Maybe unsurprisingly, given the fact that Tanzania has undergone a rapid and fundamental regime change in the past 15 years, transforming itself from a centrally planned, one-party state to a market-economy and multi-party democracy, one of the key conclusions is that existing integrity structures need to be made more robust. The threatened independence and institutionalisation of Tanzania’s integrity pillars is partly a function of uneven political will to push reforms on the ground, and partly a function of an evolving political and regulatory system in flux. However, the report diagnoses a real risk that corruption may well become endemic if these critical challenges are not addressed: *“The relationship amongst these organs [i.e. integrity and anti-corruption institutions, LK] as it now exists does not encourage effective freedom strong enough to create checks and balances to avoid the monopoly of power by one/few organs, which is proven to breed corruption.”* (p. 36).

3.1.2. Strengths and weaknesses as an effective anti-corruption tool

31. Without going into all the details of the report, its undisputed merit is the concise and well-written assessment of most relevant aspects, facts and factors shaping corrupt practices within and between the different institutional arenas. The report includes a corruption profile, which provides a highly useful and relevant synopsis of the main causes and types of corruption found in Tanzania. This includes ‘hard’ factors such as economic mismanagement as well as ‘soft’ factors, such as social attitude and human greed, which are equally important for a comprehensive understanding of push-factors of corruption.
32. In the section on the NIS, the main risks and problems of Tanzania’s executive, legislative and judiciary in terms of corruption are carved out, and the report provides an excellent and easily accessible overview over Tanzania’s political and administrative system. In the last two sections looking at ‘Anti-corruption Activities’ and ‘Assessment of the NIS and its Components’, neatly fits the individual institutional assessments into a diagnosis of the interdependencies of the system as a whole.
33. The report also has its weaknesses. The analysis of the institutional pillars of the NIS is of uneven detail and quality. The problem partly lies with the report’s structure, which contains an overview over what seem to be the main pillars of the Tanzanian NIS – the executive, judiciary, legislature, civil society and the media – before the actual assessment of the NIS as whole. Hence, in the main assessment, the section on the judiciary (p.22), which one of the most central pillars of any integrity system, and one which is renowned in Tanzania for being highly prone to corruption²⁰, contains a mere two paragraphs in the main part with next to no substantive or diagnostic information on the causes and risks of corruption. Although a little more diagnosis is given in the Executive Summary, and the assessment of other pillars of the NIS is far richer, this must be taxed as a severe shortcoming.

²⁰ See the ‘State of Corruption in Tanzania Report’ 2003.

34. Another weakness of the report lies the programming suggestions²¹, where the sequencing of priority areas and activities are inconsistent with the results of the diagnosis of the preceding report. For instance, one could question whether the enhancement of ‘political will’ – which is undisputedly a central problem on all levels of government and administration - is a useful policy/programming option, or whether this is not a product of more robust accountability and transparency processes. Also, whether more donor support to an institution such as the Prevention of Corruption Bureau would increase its effectiveness, if indeed one of the main problems diagnosed is the PCB’s lack of independence and susceptibility to political pressure.
35. Still, in sum, the objective of the report being the factual assessment of the national integrity system as well as a qualitative assessment of anti-corruption efforts in Tanzania, it has indeed achieved its aim. The report is a very useful, comprehensive and readable, which may be weak on the programming suggestions, but still provides policy-makers, practitioners or activists with structured information the most important causes of corruption, the main anti-corruption policies, as well as a thoughtful diagnosis of the integrity system and the problem of corruption in Tanzania as a whole.

3.1.3. Strengths and weaknesses from an HRBA perspective

36. *Express linkage to rights:* As is clear from the Source Book and the NIS Guidance Document, neither the NIS approach as a whole nor the country studies are conceived in an explicitly human rights-sensitive manner, if human rights are understood in a more specific term than generally fostering development and good governance. In hardly any of the sections of the report, be it in the corruption profile, the analysis of the NIS, nor in the identification of priority areas are human rights mentioned. One place they are explicitly mentioned is in the section of key issues (p. 36), where the lack of political will to create more accountable and transparent procedures is criticised: evidently, political will is particularly weak “with respect to reforming laws that are inimical to basic human rights and development” (p.37). Implicitly, however, they are contained where the links between poverty and corruption and the rising socio-economic inequalities within the country are revealed (e.g. p 13, p. 37). Although this is not made very explicit in the report, a conclusion can be drawn that this also extends to other rights, such as access to justice, or access to education, and is exacerbated by corruption in these sectors. In the section on the Legislature (p.18), strong emphasis is placed on the development of a legal framework defining rights and responsibilities; however, the section mainly focuses on anti-corruption measures and less on a robust system of comprehensive rights and duties.
37. *Accountability:* Accountability plays a central role in the concept of the NIS; not only the procedural framework defining accountability and responsibilities, but also the mechanisms and processes enforcing that accountability. In this vein, both institutional efforts to strengthen accountability as well as the problems that arise in practice are highlighted, for instance in the section on the Executive. Although the difficulties in creating an effective accountability framework in the public sector are acknowledged, as are the efforts to review existing systems and procedures, the report states very clearly a crucial part of the problem is political will (p. 37). This is also comes out in the section on civil society (p.27), which is struggling to come alive and perform its watchdog functions in an inimical political and increasingly legally restraining environment (see below under Participation).
38. *Empowerment:* As mentioned above, the report is very clear on the fact that in spite of a political agenda of democratic governance and zero-tolerance of corruption, the trends point in a different direction: there are signs that corruption is becoming entrenched in society at large and particularly with regard to political elites, where a culture of impunity is threatening to spread (pp. 12). The report also traces out the danger of the increasing monopolisation of political

²¹ Cf the last section, ‘Assessment of the NIS and its components’.

power, marginalising civil society even further. This links into the increasing socio-economic polarisation of society, mentioned above, which undermines efforts to build a cohesive and equitable society by disempowering and excluding the majority of citizens.

39. *Participation*: The issue of participation also feeds into the problem of (dis)empowerment. Evidently, the fragile institutional system of checks and balances observed and the centralisation of political power runs against a culture of participation and responsiveness. This also holds true with respect to building coalitions against corruption: *“Worse still is the reality that, inspite of the obvious necessity of coalition building to bring about significant success in the anti-corruption struggle, this important step has not been given serious consideration and priority. All stakeholders at all levels in the country are not yet involved and cooperating in the implementation of the anti-corruption struggle”* (p. 37). The problem of exclusion and marginalisation are underlined in the policy-making process, where *“major pieces of legislation appear to be fast-tracked into law [...]. Public consultation and debate are short-circuited”* (p.28).
40. *Non-discrimination and attention to vulnerable groups*: The corruption profile (p. 12) clearly diagnoses the key problems of corruption and discrimination. The linkages between levels of corruption and the quality of political life, the weak institutional environment, dysfunctional accountability mechanisms and not least economic factors such as inequalities triggered by corruption in privatisation or the unequal access to jobs, education and health are spelled out again in various parts of the report. In fact, it is one of the strong points of the report to provide a factual assessment of rising inequalities and the entailing risks for a society which holds developmental standards high.

3.2. China

3.2.1. Summary of Findings

41. The executive summary (pp.7) briefly traces the history of the fight against corruption, and then links it up to the transformations of the wider political and economic system and the challenges resulting for the integrity system. Two central problems are identified: first, the clarification of the roles and functions of the various institutional pillars of China, which are still suffering from a dominant state and lack of independence; second, the lack of a culture of transparency and accountability, that tends to produce administrative unresponsiveness, secrecy and, not least, leads to bureaucratic duplication and inefficiencies. The corruption profile of China (p. 12) is very short, merely touching on the different types of corruption prevalent in various sectors. The section on the different pillars of the NIS are detailed, highlighting the massive changes that China's economic regime has undergone in the past twenty years and the subsequent transformations of the regulatory and legal framework. Evidently, the Chinese Communist Party (CCP) is the dominant and driving force behind any policy decision, and is also at the heart of the fight against corruption. At the same time it is precisely this dominant position which is the source of in transparency, unaccountability and centralised authority. Hence the report strongly recommends what it terms 'strengthening the roles and positions of departments' which essentially means increasing the independence and capacity in terms of resources and rights of the central pillars of integrity. Here, the National People's Congress, the judiciary and the state audit office and the private sector and civil society are seen to have particularly important roles in creating and maintaining a culture and system of integrity.

3.2.2. Strengths and weaknesses as an effective anti-corruption tool

42. The key strength of the report is, as the NIS-approach intends, its focus on corruption as a lateral issue, and that it attempts to provide a factual assessment of the causes and consequences

of corruption in China. Although this is one of the newest reports from Asia, the Chinese country study reveals just how little evidence about corruption there still is on a country-level. The report contains a wealth of information on anti-corruption efforts, and provides a sound overview over the Chinese Integrity System, which, being a communist people's republic, is less intuitively approachable from an outside perspective. Although the section of policy issues it identifies is rather short, it does prioritise and sequence clearly the results of extensive institutional assessments. The rich understanding of the system results from the fact that it is a report authored by the Chinese Chapter of Transparency International; so, again according to the original intentions of the NIS, it gives an inside view of the integrity system and the reforms that should be faced, rather than an outsider's dissection and prescriptions. For instance, it provides a very helpful and succinct overview in form of a matrix giving the characteristics of the Chinese NIS at different historical stages (p. 11); an informative description of the complex system of anti-corruption agencies (p.25) and their functions and relationships; and an extensive section on the anti-corruption mechanisms and corruption risks of public procurement (p.28).

43. However, at the same time the inside perspective is also the key weakness of the report. The central feature of the Chinese NIS is the dominance of the CCP, i.e. a system of centralised political, administrative and, to a large extent, economic power, which by definition is inimical to good governance and the principles of accountability and transparency. The report is very sensitive to this issue. Although it does not completely ignore or deny problematic aspects – on the contrary, there are parts where it openly criticises the involvement of the executive for instance in judiciary affairs (cf. p.23) – all in all the report is gentle in its critique and at times opaque in its assessments.²² Readers coming from a different, non-communist background are bound to find this 'filter' with regard to the idiosyncrasies of the Chinese system hard to understand. The cultural relativity becomes unacceptable where certain fundamental principles and rules of an integrity are concerned, such as the rule of law or the respect for the separation of powers.

3.2.3. *Strengths and weaknesses from an HRBA perspective*²³

44. *Express linkage to rights:* As outlined in the previous section, the understanding of rights in the Chinese Integrity system, based on centralised, one-party authority, is very different to the understanding of rights in an integrity system stemming from a democratic and pluralist political system. This is also reflected in the report. The rule of law is referred to, but the systemic risks of arbitrary and discretionary decisions backed by the monopolistic exercise of power by the CCP is only indirectly alluded to²⁴. The right that is accorded the most attention is the right to report and disclose, which is seen to be "*a major democratic right of Chinese citizens protected by the constitution*" (p.19). The Chinese system of preventing and investigating corruption relies heavily on encouraging informants to report corrupt practices, and has whistleblower-protection in place. However, there is no mention in the report of core political and civic rights that are being

²² An example of such gentle and/or opaque critique can be found for instance in the discussion of political parties (which, in a de facto one-party-state, seems a contradiction in terms), where the ruling party is depicted in terms of a paternalistic authority in spite of democratic constitutional provisions: "*As the ruling party, the CCP should be supervised by the democratic parties and common citizens, according to the Constitution. [...] The CCP emphasises keeping close contact with the mass of the people. It has set up organisations at all levels for receiving letters and visits from the people to hear their complaints, accept their input and help them solve problems and difficulties they encounter.*" (p. 16).

²³ For information on the human rights-situation see Human Rights Watch on China (under <http://hrw.org/english/docs/2005/01/13/china9809.htm>) and Human Rights in China (under <http://www.hrichina.org/public/contents/history?cid=1074>) (both last accessed 29 May 2007).

²⁴ E.g with regard to the centralised power of government, which is openly criticised but in relation with economic development, and not the fostering of a rights-based and rights-respecting political system (s. P.13). Or on p. 20, where the "more important role" of the NCP in participating in state affairs and promoting the rule of law is mentioned, whilst only indirectly referring to the practical dominance of the CCP.

denied or repressed in China, or of the risks this bears with respect to the lives and dignity of accused persons. Equally, there is no mention of social, cultural and economic rights that are not respected or fulfilled, and the role of corruption in entrenching these inequities. This is particularly blatant in the section on civil society, which is only assessed with respect to the legal and other provisions they have in place to prevent corruption, without a mention of the difficulties, risks and potentially draconian sanctions they are exposed to when practising their freedom of speech. In the same vein, only the introduction of 'severe' measures to prevent and sanction corrupt practices is mentioned, whereas the death penalty is not discussed at all.

45. *Accountability*: Like in the case study of Tanzania, there is a consistent focus on accountability. The central topic is reporting and disclosing, and also the introduction of accountability systems within government. The assessments of such mechanisms contained in the report may be comprehensive, however, but not very profiled. The fact that the greatest part of these accountability systems are based on reporting-mechanisms and the encouragement of informants in a context of monopolised and ultimately discretionary power of the CCP, a weak and uneven rule of law, and vulnerable and corruption-prone judiciary is not carved out. Likewise, whilst "*the way that the NPC supervises and encourages anti-corruption work*" (p.20) is discussed, there is no mention that it has no leverage over the executive beyond consultative processes.
46. *Empowerment*: Empowerment is not discussed in terms of access to rights, but only in sectoral terms. The potential for civil society to develop is mentioned, and implicitly its weakness and fragility diagnosed, but this key dimension of empowerment is not elaborated (p. 34). The same for the business sector, which is given more attention, interestingly again with regard to its role in economic development.
47. *Participation*: There is hardly any explicit diagnosis of participatory mechanisms, not even in the section on restricting the power of government, which only focuses on administrative reform. The right of citizens to report and inform is treated extensively, but without tracing out clearly that it does not extend to any binding mechanisms of collective decision-making. More crucially, the fact the integrity system is framed by a one-party state, that is by definition either exclusionary and monopolistic, is not problematised, although China is a country where freedom of expression is not guaranteed and where dissidents face harsh sanctions.
48. *Non-discrimination and attention to vulnerable groups*: As can be gleaned from above comments, there is no attention paid to and no mention of discriminating rules and practices, or the problem of marginalised and vulnerable groups. The only section where one could read between the lines is the relatively explicit critique of state intervention in the judiciary as denying people's access to justice, by destroying "*the equity and justice of the judiciary*" (p.22).

4. CONCLUSIONS: COMPARING THE NIS AND THE HRBA TO DEVELOPMENT

4.1. General

49. Very remarkably for an approach that was coined by a single NGO, the NIS has become a standard reference for anti-corruption policies. Not least framed by the evidence supporting the NIS-approach to understanding corruption, a consensus has emerged in the international development community that the prevention and control of corruption is crucially dependent on the institutions of a country. The NIS approach provides a *clear and operational framework* for assessing the institutional and systemic corruption risks and revealing the country-specific interdependencies between the institutions causing or facilitating corruption. This is the undisputed key strength and unique feature of the NIS.

50. The NIS Source Book provides the *conceptual and normative frame of reference* for understanding these structural, procedural and socio-political interdependencies. Unfortunately, for various reasons the Source Book has not been updated since its publication in 2000, so new insights from empirical evidence have not been incorporated. However, the ideas and principles laid out still prove valid and remain the foundation of the NIS-approach.
51. One important dimension the NIS approach does not capture is the *sectoral* assessment of corruption. The concept is, evidently, a systemic one, and hence seeks an encompassing rather than a compartmentalised approach. However, there is much need of more evidence based and systematic research about sector-specific types of corruption, as reforms in specific sectors often have a high impact in terms of effectiveness and visibility. Transparency International addresses this need in its general activities, and also in the annual Global Corruption Report, which are devoted to different topics or sectors each year. However, the NIS could well be made fruitful for specific sectors, especially in very corruption-prone areas such as health or the judiciary, by capturing the sectoral pillars, rules and practices framing corruption.

4.2. NIS country studies

52. The NIS country-studies, on the other hand, provide *the mechanisms to put this comprehensive approach into anti-corruption practice*. The surveys themselves have come a long way since their inception, a visible result of continual methodological improvement, higher standards and more systematic quality-control. One of the great advantages of the country-studies is their evidence-based and semi-standardised approach. Although corruption and the control of corruption are high on political and developmental agendas, there is even to date very little comprehensive empirical data that allows for the analysis of political, social and economic systems of a country. Undisputedly, with the publication of the country-studies, TI is in the process of illuminating an encompassing factual understanding of corruption.
53. The comparative element of the NIS country-studies is also being tackled: based on the country surveys, the first 'Regional Overview Report' was published in 2006, comparing and discussing the NIS of Eastern and South-eastern Asian countries.²⁵ The aim is to identify on a regional level the major trends in curbing corruption as well as the best practices employed in curbing corruption.
54. However, as the discussions of the Tanzanian and Chinese reports show, the country studies are not immune to flaws. In particular, the national ownership in form of national consultants and responsibility of the National Chapter leads to a key feature of the NIS country studies. As the case of China shows, there may be divergences between the national perception of corruption-risks and the weaknesses of an integrity system on the one hand, and the international perception on the other hand. This can be particularly difficult in countries where there are wide discrepancies between the national and international assessment of central elements of an integrity system. If the country studies are taken as a benchmark and not as a mapping exercise, then this is highly problematic. However, the standpoint of TI is that the NIS should not be utilised as a blueprint or 'one-size-fits-all', but as a catalyst for a process-oriented emergence of anti-corruption coalitions that must be country-driven to be effective. Although the ultimate goal may be more encompassing in terms of achieving universal integrity standards, *the narrow goal of the surveys is the identification of entry-points against corruption and the support of stakeholders in the process of preventing and controlling corruption*. The country-studies are primarily targeted at a domestic audience; the ownership by the National Chapter and the authorship by national consultants

²⁵ Transparency International 2007. National Integrity System Regional Overview Report: East and Southeast Asia 2006. Berlin.

derives from the fact that they are conceived as tools for consolidating and strengthening national anti-corruption efforts. In this sense the surveys are intended to be used first and foremost an instrument by and for the National Chapters and coalitions against corruption, which means they must not only be critical, but they must also be acceptable and understandable to national policy-makers and stakeholders alike. Evidently, there is a fine balance between co-optation and dialogue. Hence, *this relativity of standards is both a key strength and a key weakness of the country reports.*

55. Another problem of the country surveys is that however well designed and rich in substance they may be, their use is highly contingent on the National Chapters or on the political will of the countries in question. In other words, it seems that the *wealth of data and information generated to date has been under-exploited* for programming, anti-corruption-strategies, education sensitisation, or advocacy by the National Chapters, the donors and other interested stakeholders. The dissemination of the results and the targeted use and exchange of information with stakeholders and like-minded agencies to increase the impact is an objective that has not been achieved yet in a satisfactory manner.²⁶

4.3. NIS and Human rights

56. The main objective and the founding principle of the NIS is the prevention and control of corruption. *Hence, human rights only play a role inasmuch as they affect systems, institutions, rules and procedures that strengthen (or weaken) the integrity system framing corrupt practices.* This is a central premise, and evidently the main difference between a NIS and a human rights-based approach (HRBA) to development. The distinction is very evident in the Source Book, where civil and political rights are scarcely mentioned explicitly and as stand-alone principles. Where they are mentioned, they emerge from the institutional pillar or legal framework under scrutiny. The illustration is provided in the institutional architecture of the ‘temple of integrity’, where human rights are not accorded a section of their own (unlike for instance ‘sustainable development’). Implicitly, of course, they are contained in the rule of law, i.e. one of the golden balls resting on the roof of the temple, which by minimal definition includes core political and civil rights, and more generally is considered to encompass social, economic and cultural rights as well.
57. Still, having observed the noticeable lack of the human rights discourse in the concept of NIS, *by definition human rights form a crucial and integral part of any integrity system.* An integrity system that does not respect fundamental human rights does not fulfil the basic premise of integrity. In the Source Book and the country surveys, it seems that specific human rights or the general concept of universal and indivisible rights are not made explicit because they are self-evident in an understanding of integrity based on the rule of law. The image of the temple again makes this clear, as the institutional pillars of integrity rest on society’s values: these may differ depending on the cultural and regional context, but the core individual and collective human rights as set out in the Universal Declaration of Human Rights and subsequent Covenants, Treaties and Protocols must be considered as representing a global consensus on basic values of every society.
58. The core purpose and tangible merit of the NIS approach is to clarify, diagnose and survey the linkages between the integrity system and corruption, and not the more normative objective of a general recognition and mainstreaming of human rights in development. Hence, the blind spot

²⁶ In spite of capacity-restraints, Transparency International is now in the process of applying a more strategic approach to maximise the use and impact of the country studies. This and the clarification of other information contained in this section is based on a telephone interview with Sarah Repucci, Senior Research Coordinator of the NIS country surveys, Transparency International Secretariat in Berlin, on 16 May 2007.

of human rights is a function of the objectives of the NIS, and many human rights are captured by the NIS approach.

59. However, although the omission can be rationalised, it still indicates a fundamental lack of sensitivity to a rights-based approach. In the last decade it has become almost universally accepted that development is based on and framed by core human rights, as international norms that protect all people from severe political, legal and social abuses. *Corruption is a central issue of human rights and vice versa: first, corruption, even in its most minimal understanding as the waste of public resources, is both a prime source and facilitator of obstacles to development, which constitutes a human right in itself; second, corruption is a cause and facilitator of specific human rights abuses, undermining such core rights as equality before the law and nondiscrimination.*²⁷ Although this fact is not operationalised, it is recognised by Transparency International, as is expressed in the Seoul findings: “we condemn corruption as immoral, unjust and repugnant to the ideals of humanity enshrined in the Universal Declaration of Human Rights and we confirm our conviction that all human beings have a basic human right to live in a corruption-free society”²⁸.
60. The concept of a NIS that rests on values of inclusion, fairness and equity would benefit from referring explicitly to the existing frame of reference that defines these universal values. *The wide acceptance of human rights, their normative status and their ethical substance would enrich to the essentially functional approach of the NIS, and would provide a clear-cut normative reference in the coalition-building and consensus-making processes that the NIS-approach strives for.* It is clear that the NIS and the HRBA are complementary, in that the NIS highlights the institutional framework and the HRBA underlines the rights and duties of individuals, institutions, organisations and states. However, the integration of a more human rights-sensitive perspective would allow for stronger assessment of integrity systems, by capturing the ethical framework that goes beyond rules and procedures. The strength of the HRBA is precisely that it calls attention to the individual and institutional responsibility to adhere to ethical behaviour. It is this individual and institutional behaviour which brings an integrity system to life, without which the spirit of the rules and procedures will not be achieved. Both the HRBA and the NIS are very process-oriented, in that they seek to facilitate and guide the transformation of states and institutions towards more equitable and sustainable development. *The great efforts being put into the operationalisation of both the NIS and the HRBA, their emphasis of the assessment and mapping situations on the ground provides much scope for mutual exchange and learning.*

Lucy Koechlin, May 2007

²⁷ For further reading on corruption and human rights see Kaufmann, Daniel (2004). *Human Rights and Governance: The Empirical Challenge*. Paper prepared for the conference “Human Rights and Development – Toward Mutual Reinforcement”, New York University School of Law; Pilapitiya, Thusita (2004). *The impact of corruption on a human rights-based approach to development*. UNDP Oslo Governance Centre; or Cockroft, Laurence (1998). *Corruption and Human Rights – A Crucial Link*. Working Paper, Transparency International, Berlin.

²⁸ International Anti-Corruption Conference (2003). *The Seoul Findings*. Seoul, May 2003.