

# INDIVIDUAL PRESENTATION PAPER

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## I. INTRODUCTION

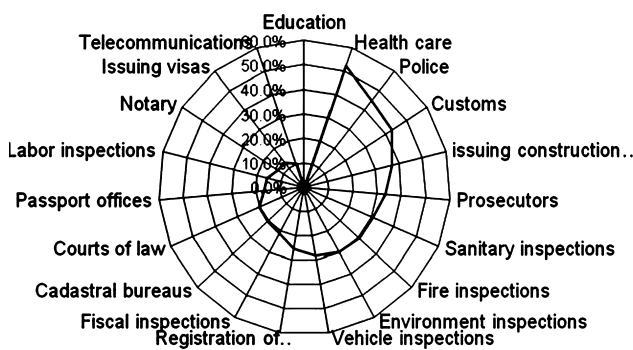
Corruption remains among the top concerns of the population of the Republic of Moldova, being fifth after the problems which follow immediately the issues related to the survival of the individual and his family.<sup>1</sup> According to Transparency International Moldova, the Global Corruption Barometer <sup>2</sup> shows that two thirds of Moldovan respondents argue that corruption is a serious problem affecting the public sector and 64% reveal that institutions are ‘captured’ by private interests groups.

Justice and police are considered the most corrupt institutions in Moldova, which is followed by the Parliament and political parties. 55% of respondents considered ineffective Moldovan government efforts in combating corruption, and 54% of respondents claim that ordinary people can contribute to the fight against corruption, and about half of them are willing to denounce corruption.

Recently, public awareness of the threat posed by corruption has increased. If 10 years ago the main part of respondents considered poverty as the main cause of corruption, at present two thirds of the respondents understand that corruption causes poverty. The share of households that understand the impact of corruption on poverty increased from 56.8% in 2008 to 66.9% in 2012. Among business people, their share increased from 57.1% in 2008 to 63.5% in 2012.

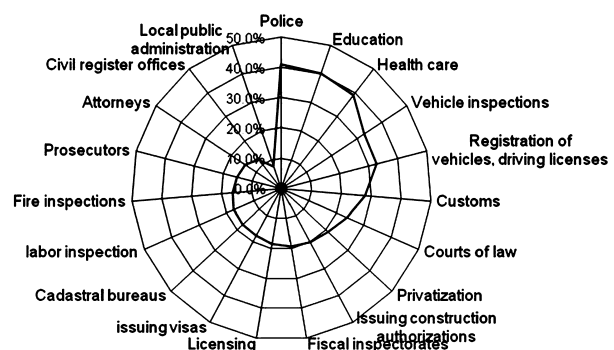
A survey conducted by Transparency International-Moldova<sup>3</sup> determined the institutions where unofficial payments are made most frequently.

**Frequency of bribes offered by business 2012, %**



**Total amount of bribed estimated ~ 31,2 million USD (+49% compare to 2008)**

**Frequency of bribes offered by individuals 2012, %**



**Total amount of bribed estimated ~ 58,6 million USD (+15% compare to 2008)**

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<sup>1</sup>National Anti-Corruption Strategy 2011-2015 approved by the Decision nr. 154 from 21 Jul. 2011 of Parliament of Republic of Moldova published in Official Monitor nr.166-169/483 from 07 Oct. 2011.

<sup>2</sup> <<http://www.transparency.md/content/view/1825/49/lang,en/>>.

<sup>3</sup>Sociological Study Corruption in Republic of Moldova 2012: Perceptions vs. Personal Experiences of Households and Business People conducted by Transparency International-Moldova with the support of the U.S. State Department and in collaboration with the Center for Sociological Studies and Marketing “CBS-AXA”.

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PARTICIPANTS' PAPERS

According to the calculations, the total amount of bribes paid by households made in 2012 was about 732.7 million Lei, increasing in absolute terms, compared to 2008, by over 15%.

**Households – Evolution of Total Bribes (Mill. Lei)**

	2005	2007	2008	2012
Police	81.5	79.9	97	45.4
Education	126	76.5	64	185
Health care	200	153	190	238
Other	493.6	280.6	279	264.3
<b>TOTAL</b>	<b>901.1</b>	<b>590</b>	<b>630</b>	<b>732.7</b>

The total amount of bribes paid by businesses in 2012 amounted to about 390 million Lei, increasing by approximately 49% compared to 2008. The main payments were made to the customs officers (75 million Lei), health care institutions (41.6 million Lei), police (41 million Lei) and fiscal inspectors (32.4 million Lei).

Estimated Total Bribes: Businesses, Mill. Lei

Customs	75
Health care system	41.6
Police	41
Fiscal inspectorates	32.4
Fire inspectors	31.8

The evolution of the estimated total amount of bribes paid by businesses shows 150% growth of this indicator compared to 2008, which cannot be explained only by inflation and, essentially, proves a worsening of the business environment in Moldova.

**Businesses – Evolution of Total Bribes (Mill. Lei)**

	2005	2007	2008	2012
Customs	120	66.1	33.8	75
Fiscal inspections	69.3	36	25.8	32.4
Courts of law	Z	23.3	11.2	18.1
Construction authorization authorities	14.5	26.5	8.1	13.1
Other	203	155.7	185.1	251.4
<b>TOTAL</b>	<b>406.8</b>	<b>307.6</b>	<b>264</b>	<b>390</b>

Conclusions of national and international reports and studies outline the following problems and sectors vulnerable to corruption: lack of a stable anti-corruption legal framework, coherent and adjusted to international standards; lack of efficient mechanisms of law enforcement; reduced use of administrative instruments of preventing and combating corruption; low level of confidence of the population in the performance of the law enforcement agencies; activity of the state and political institutions which is not sufficiently transparent; lack of transparency in public procurement; insufficient budgetary resources for proper activity of authorities entitled to protect the legal norms and the judicial system; insufficient anti-corruption education and training of public officials and population; absence of sector studies which would reveal the magnitude of the corruption phenomenon.

Paying particular attention to *Effective Measures to prevent and Combat Corruption and to encourage Cooperation between the Public and Private Sectors*, I will cover the main issues related to cooperation between these two sectors as follows.

## II. ANTI-CORRUPTION LINES

Anti-corruption lines are effective tools for preventing and combating corruption and encourage cooperation between the public and private sectors as they allow population to report acts of corruption or abuse of civil servants in the time of their commission. Hotlines protect the identity of the whistle-blower if he / she does not intend to disclose it and allow civil society to be consulted on the issues faced in dealing with public authorities. Most ministries and state agencies in the Republic of Moldova have hotlines, but their names differ from one institution to another (hotline, anti-corruption line, green line). The working hours of anti-corruption hotlines, as a rule, coincide with the working hours of the institutions concerned. The hotline of main authority in the field of preventing and combating corruption is the National Anti-corruption Center's 24-hour working regime.

Most institutions provide satisfactory visibility of the phone number of anti-corruption line, either by placing it on the homepage of the institution website, or by creating a separate section "Anti-corruption" on the site. However, there are cases when the hotline numbers are difficult to be found on the site and at the Ministry of Justice anti-corruption phone number can be found only in the minister's antechamber.

Hotline activity issues are related to insufficiency of anti-corruption hotline regulations, failure in ensuring high dissemination among society regarding existence of hotlines, visibility of phone numbers of anti-corruption hotlines on web pages and information boards, lack of skilled staff in charge of communication with citizens able to ensure proper functioning of anti-corruption lines.

## III. REPORTS OF FINANCIAL INTELLIGENCE UNITS

Another efficient instrument of cooperation between the public and private sectors is related to information about suspicious transaction reports from Financial Institutions to Financial Intelligence Units. This partnership is regulated through the adoption by the Republic of Moldova of the Law on preventing and combating money laundering and financing of terrorism from 26 July 2007.<sup>4</sup> According to this law, financial institutions are required to inform immediately the Office for Prevention and Fight Against Money Laundering of the National Anti-corruption Center on any activity or any suspicious transactions of money laundering and financing of terrorism in preparation, implementation or already completed. Also the Office for Prevention and Fight Against Money Laundering analyzes all activities or transactions in cash with a value of at least 100 thousand Lei or by transfer with an amount of 500 thousand Lei and higher made in Moldovan banks. In case of suspicious transactions, the materials are delivered to the prosecution body of the National Anti-corruption Center for further investigations.

## IV. DECLARATION OF INCOME AND PROPERTY

An efficient tool for civil society monitoring of public servants integrity during their public activity serves mandatory declaration of income and property of people with public positions, judges, prosecutors, civil servants and persons with public responsibility.

According to the law, declaratory entities are required to declare on oath, income and property of income through the Declaration of income and property which shall be in writing and represent a public document. Correctness control of the declarations of income and property shall be performed by the National Integrity Commission in accordance with Commission Regulation approved by Parliament. If subjects intentionally indicated in the declaration inaccurate or incomplete data they carry liability under art. 352<sup>1</sup> of the Criminal Code of the Republic of Moldova.

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<sup>4</sup>Published 07 Sep. 2007 in Official Monitor of the Republic of Moldova Nr. 141-145.

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It should be mentioned that because of parliamentary debates on the appointment of the members of National Integrity Commission, the activity began only in late 2012. At present the Commission's work is seriously hampered by the existing legal framework, which limits its powers of investigation, by lack of staff and delays in submitting statements by the declaratory entities. Also the enacting of the criminal liability for illicit enrichment is hampered by different opinions among the political parties. A novelty in the legislation of the Republic of Moldova is introducing of integrity tests and lifestyle monitoring of the National Anti-corruption Center staff.

## V. INSTITUTION OF WHISTLE-BLOWERS

By Law Nr. 277 of 27 December 2011<sup>5</sup> whistle-blower institution was established and relevant provisions of the Law on Preventing and Combating Corruption and the Code of Conduct for Civil Servants have been filled in this regard. The law defines whistle-blower as a public official who learned about acts of corruption and those related to corruption, acts of corrupt behaviour and communicates them to the criminal investigative body, Prosecutor, NGOs and the media.

The law establishes three measures to protect whistle-blowers, and failure in protection measures of public servant are punished under the Contravention Code with a fine of up to 3,000 Moldavian Lei.

At the moment the outcomes of this institution are not yet visible due to the lack of public servants information and lack of promotional campaign of this institution. Therewith, previous practice has shown that whistle-blowers reports usually caused negative consequences for those who report, some were even prosecuted started or arrests, some were dismissed or forced to resign.

## VI. CRIMINAL PROCEEDINGS

Criminal proceedings consist of the activities of the criminal investigative bodies and the courts, in which parties in criminal cases and other individuals participate and that are conducted in line with the provisions of the Criminal Procedure Code. Criminal procedure of the Republic of Moldova admits the following objective data in evidence: expert's reports; material evidence; transcripts of the criminal investigation or of judicial inquiry; documents (written, audio, video); audio and video recordings and pictures; technical, scientific, medical and forensic reports; procedural documents that record the results of following special investigative measures: audio and video recording; supervising the home by using technical means providing registration; the interception and recording and images; retention, research, teaching, or lifting searching mail, monitoring telegraph connections and electronic communications; monitor and control financial transactions and access to financial information; documentation of methods and technical means and locating or tracking by global positioning system (GPS) or by other technical means; collection of information by electronic communication service providers; identifying the subscriber, the owner or user of an electronic communication system or a point of access to a computer system; visual tracking; control the transmission of money or other tangible assets extorted; undercover investigation; cross-border supervision; controlled delivery; collecting samples for comparative research; examination of objects and documents; acquisition of control; questioning; collecting information about people and events; identifying of persons.

The procedure of acquiring of evidence is strictly regulated by the Criminal Procedure Code, and it can be performed only in written form (by means of orders and transcripts of the criminal investigation or of judicial inquiry) and is strictly related to the gravity of the investigated crime and rights and freedoms of the participants of the proceedings.

Collection of evidence that intrudes on the privacy of a person or his or her domicile, the privacy of correspondence, telephone or electronic conversations, telegraphic or other communications, state, trade or banking secrets and other actions provided by law, should be authorized by the investigative judge. Other evidence should be collected by the order of the prosecutor or criminal investigative officer.

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<sup>5</sup>Published 03 Feb. 2012 in Official Monitor of the Republic of Moldova Nr. 25-28.

The major problem that Moldavian investigative bodies have to face is the requirement of completing wiretapping or other means within a period of 48 hours. After the expiry of this term, the prosecutor must bring charges against the suspect. This situation exists from October 2012, due to the gap of legislation performed by the Parliament, and it has remained unrepaired till now. This gap of legislation put the investigative bodies specialized in combating crimes of corruption into an impossible position to collect the most important evidence necessary for solving the crimes, identifying of all crime participants, bringing charges and conviction of the defendants.

#### **A. Acquiring Suspect Statements**

According to the criminal legislation of the Republic of Moldova the suspect is a person whom certain available evidence indicates committed a crime prior to charges being brought. If according to law the suspect has immunity from criminal liability, criminal investigative body addresses to the relevant authority notifications related to the withdrawal of persons' immunity and the initiation of a criminal investigation against him. Law affords immunity from criminal liability to the President of the country, deputies, judges and members of foreign diplomatic mission and members of their families.

After his/her designation as a suspect, the suspect shall be interrogated only in the presence of a defence counsel or an attorney providing the legal assistance. The suspect has right to refuse or make statements on the incriminating suspicion. The investigative body must explain to suspect that refusing to make statements cannot be interpreted against him/her and warn that statements made by suspect may be used as evidence against him. Statements of the suspect can be obtained also under the results of special investigative measures as electronic surveillance, wiretapping, installation of appliances that monitor and record audio and video, retention, research, teaching, or lifting on searching mail, monitoring telegraph connections and electronic communications or undercover operations.

Criminal legislation of the Republic of Moldova introduced the institution of plea bargaining in 2003. In the case of plea bargaining, punishment provided in the criminal law is reduced by one third. The Republic of Moldova during the last ten years has harmonized its legislation in accordance with the international standards regarding the institution of suspects. The main problems related to the suspect are the poor conditions in prisons, abuses of police officers and prison guards.

#### **B. Acquiring Witnesses Statements**

The testimony of a witness is oral or written made during criminal proceeding regarding any circumstances to be determined in the case of including information about the suspect/accused/defendant, injured party and his/her relationship with them. The person conducting the procedural action explains to the witness his/her rights and obligations and warns him/her about his/her liability for refusing to testify or for deliberately making false testimony.

Art. 312 and 313 of Criminal Code establish punishes for false statements by a fine of up to 6,000 Lei or by community service for 180 to 240 hours or by imprisonment for up to 2 years and for the refusal or evasion of a witness or of an injured party to make statements, that is punished by a fine of up to 6,000 Lei.

The Criminal Procedure Code and law on state protection of victims, witnesses and other persons assisting in criminal proceedings provides as measures of protection of witnesses hearing by special technical means that assure the distortion of the voice; hiding or changing of identity, changing of residence or place of work or study, changing of appearance, installing a home alarm system, changing the phone number and the protection of property.

Current issues regarding the institution of witnesses are the lack of trust of witnesses in law enforcement authorities concerning the ability to protect them for their testimony made against defendants. Another problem is the mild punishment for perjury and obstruction of justice, because the prejudices caused by these crimes are more serious then the punishment.

## VII. IDENTIFICATION, TRACING, FREEZING, AND CONFISCATION OF PROCEEDS AND RETURN AND DISPOSAL OF CONFISCATED ASSETS

Criminal investigative bodies of the Republic of Moldova dispose of sufficient resources for identification, tracing, freezing, confiscation of proceeds and return and disposal of confiscated assets. For the most expensive goods there are electronic registers opened for criminal investigative bodies. Law provides that a criminal investigative body *ex officio* or the court at the request of the parties may undertake during a criminal proceeding measures for securing the recovery of damages caused by the crime and for guaranteeing the execution of a punishment by fine. Measures for securing the recovery of damages consist of sequestering movable and real property. The current issues regarding these measures are related to tracing and confiscation of proceeds of crime from bank accounts of the off-shore companies and recovery of assets from dummy owners.

## VIII. PREVENTIVE MEASURES

Moldovan legislative framework in the field of anti-corruption has been considerably extended and important laws have been adopted, e.g.: Law from 22.02.2008 on Conflict of Interests, Law from 22.02.2008 on the Code of Conduct of the Public Servant, Law from 25.04.2008 on Prevention and Fight Against Corruption, Law from 13.11.2008 on Transparency in the Decision Making Process, Law from 18.12.2008 on Verification of Holders and Candidates to Public Functions, etc. Although these laws were much anticipated, they showed no effect in the first years after adoption, mainly due to the lack of a clear application mechanisms. Taking into account existence of certain old ineffective regulations, it is necessary to elaborate and adopt the mechanisms of anti-corruption legislation which would be effective in the following fields: income and property declaration, control over their origin; declaration of conflict of interests, transparency in the decision making process, gifts, etc.

Also the Republic of Moldova and its international partners provide active financing of anti-corruption campaigns (by television, internet, radio, trainings and seminars, etc.). The most known national anti-corruption campaigns for the last two years were “*You can stop Corruption*”, “*Transparent property*”, “*Corruption and cancer — social diseases*”, “*Corruption kills education*”, “*I do not give or take bribes*”, etc.

## IX. EXTRADITION AND INTERNATIONAL COOPERATION

The Constitution of the Republic of Moldova provides that no citizen of the Republic of Moldova can be extradited or expelled from his/her country. Foreign or stateless citizens may be extradited only in compliance with an international agreement or under conditions of reciprocity in consequence of a decision of a court of law. In no case shall Republic of Moldova extradite a person who is accused for his political views or for actions that do not constitute a crime in the Republic of Moldova. According to the Constitution, the legal provisions on human rights and freedoms are interpreted and applied in accordance with the Universal Declaration of Human Rights, with the pacts and other treaties, to which the Republic of Moldova is a party.

Republic of Moldova has adhered to the UN Convention against Corruption, the Criminal Law Convention against Corruption, the Civil Law Convention against Corruption, the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, Directive 2005/60/EC of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, and other international treaties. Mutual legal assistance, extradition and information exchange between law enforcement authorities of the Republic of Moldova and other states are performed by the Division of International Cooperation of the General Prosecutors Office of the Republic of Moldova.

## **X. THE CURRENT SITUATIONS AND PROBLEMS OF UTILIZING THE PRIVATE SECTOR AND OF COOPERATION BETWEEN THE PUBLIC AND PRIVATE SECTORS IN PREVENTING AND COMBATING CORRUPTION; MEASURES ADDRESSING COOPERATION STIPULATED IN UNCAC ARTICLES 12, 13 AND 39**

The legal framework of the Republic of Moldova contains a sufficient number of regulations designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honorable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State.

Law provides compulsory regulations related to transparency among private entities, procedures regarding subsidies and licenses granted by public authorities for commercial activities, imposes restrictions of former public officials or on the employment of public officials by the private sector after their resignation or retirement.

The tax system also is well regulated and contains sufficient regulations in preventing and detecting acts of corruption regarding the obligatory maintenance of books and records, financial statement disclosures and accounting and auditing standards. The Criminal Code punishes such doings as recording of non-existent expenditures, use of false documents; and intentional destruction of book-keeping documents earlier than foreseen by the law.

## **XI. CONCLUSION**

The politics on cooperation between the public and private sectors in preventing and combating corruption are provided by the National Anti-Corruption Strategy<sup>6</sup> (2011-2015). According to this document the Republic of Moldova promotes the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. The strategy promotes enhancing the transparency of and promoting the contribution of the public to decision-making processes; ensuring that the public has effective access to information, undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption.

Despite these policies and legal framework, the cooperation between public and private sectors in preventing and combating corruption do not bring the expected results. In the Republic of Moldova, corruption is treated as a form of business, the branches of power are controlled by groups of interests, there is no transparency in recruitment of the heads of public authorities, and usually these are appointed due to the common business relationships, are in kinship or have other common interests.

Consequently, these groups of interests force the representatives of private sector, to give bribes in order to survive, because due to economic competition the fulfillment of tax obligations will increase the price for their goods and services. Consequently government revenue decreases and, hence, the state is not able to pay for the work of the public employees at a suitable level. In such a way majority of active work population have insufficient incomes and are forced for seeking a job abroad.

Taking into consideration the issues mentioned above, following the goal of improving the situation in the field of preventing and combating corruption, the following solutions are proposed: Strengthening the capacity of the National Integrity Commission (liquidation gaps in legal, digitization and processing of its electronic information, detailed verification of the candidates for public office,

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<sup>6</sup>National Anti-Corruption Strategy 2011-2015 approved by the Decision nr. 154 from 21 Jul. 2011 of Parliament of Republic of Moldova published in Official Monitor nr.166-169/483 from 07 Oct. 2011

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ensuring that information is exchanged with counterpart institutions in other countries, empower with the right to start trials for extended confiscation); Strengthening the capacity of the National Anticorruption Center for fighting against high-ranking officials; introduction of criminal liability for making decisions in situations of conflict of interest; improving the legal framework and establishing an effective control system of financing political parties and election campaigns; de-monopolization of the media and facilitating of the access to public television for new political forces; the introduction of collective responsibility for members of governmental commissions empowered to spend public finances; and increasing collaboration with civil society in order to development of intolerance towards corruption.