THE ROLE OF PARLIAMENTARY OVERSIGHT IN ANTI-CORRUPTION

A presentation to an ACP - EU Joint Parliamentary Assembly meeting

By Prof. Gavin Woods

25 September 2015

EU Parliament, Brussels.
What is the Role Parliamentary Oversight?

“Parliamentary oversight is the review, monitoring and supervision of government and public agencies including the implementation of policy and legislation.” (IPU 2007)

This generally accepted definition places greater emphasis on the nature and purpose of oversight than on adherence to routine oversight procedures.
A Narrower or a Wider interpretation of “oversight”

- This definition of oversight is significant as there can be a *narrow and cautious interpretation* of the role of parliamentary oversight - as can there be a *wider and more assertive interpretation*.

- The interpretation that is adopted will determine either *how defensively or how purposefully* parliamentary oversight tools and mechanisms are used.

This presentation will demonstrate how, through a wider interpretation and a more purposeful application of oversight tools and mechanisms, parliament’s anti-corruption oversight role can be very influential in the reduction of public sector corruption.
Turning to the issue of corruption - as a focus of oversight.

Corruption is a multi-faceted and complex subject which invites many differing theories and perspectives.

These competing views can confuse us as how we might best approach oversight activities of an anti-corruption nature.

It is therefore necessary to have a sound and logical perspective from which to understand the subject of corruption, and from there to contemplate how parliamentary oversight might help combat it.
An informed perspective through which to direct anti-corruption oversight

-The universally accepted criminological perspective is that every instance of crime (and corruption) depends on there being three essential factors present in the make-up of any would-be perpetrator.

-These factors being motive, opportunity and justification.

-Logically, if there is no motivation to commit a corrupt act then there will be no corruption. Likewise, if there are no opportunities to be corrupt, then there will be no act of corruption. And thirdly, if people’s moral values or conscience does not allow them to justify their being corrupt - then they will not be corrupt.
What Anti-corruption Oversight should concentrate on

- The rationale that should direct anti-corruption type oversight concerns how oversight could help eliminate, or at least weaken, any of these three conditions.

- It is however fairly apparent that reducing people’s motives to be corrupt and discouraging them from justifying their acts of corruption is beyond the influences of parliamentary oversight.

- Parliamentary oversight can however do much to reduce or weaken opportunities for corruption.
Parliamentary Oversight and its role in reducing/weakening “opportunities”

Oversight should be directed towards the prevention and discouraging of corruption-type opportunities by:

- Promoting particular measures which prevent opportunities from arising.
- Raising the risk for perpetrators of their being discovered should they decide to take up corrupt opportunities. So as to discourage them from doing so.
- Increasing the possibilities of punishment for those who get caught taking such opportunities. So as to discourage them from doing so.

Increasing the risk of being caught and the possibilities of punishment is explained by the theories of rational choice and risk and return.
Key areas of oversight that can reduce/weak opportunities

Particular oversight activities can help promote a situation where opportunities for corruption are restricted. These activities concern:

- an effective range of relevant laws being applied,

- modern financial management systems being properly used,

- a dedicated internal anti-corruption function being employed - as per international best practice.
1. Necessary features of a legal framework

The more essential laws which anti-corruption oversight should promote include:

- **A central act which criminalises corruption** - especially bribery. And which imposes sanctions on those who are caught. And which imposes obligations on those who witness corruption to report it. E.g. the FCPA in the US and the Anti-bribery Act in the UK.

- **A whistle-blowers type act.** With the necessary mechanisms/facilities being established through which to report corruption and through which the identity and safety of the whistle-blower is protected.

- **Laws which establish and adequately mandate specialised corruption investigation agencies.**

- **A strong and independent prosecutorial authority.**

- **An Act which specifies the financial management systems and practices which must be used and maintained by all government institutions.**

- There are other more peripheral laws which are also important.
Going beyond legislating - to overseeing the laws

Oversight should go beyond just ensuring that such laws are in existence - and should also ensure:

- that these laws incorporate international best experience

- that these laws are fully implemented and then fully applied.

- that these laws are effective - and where not, by motivating necessary changes to the law.
2. Financial Management systems

The second area of anti-corruption oversight activity:

- This concerns the use of internationally recognised financial management systems in each and every government institution.

- These systems, as a first line of defence against corruption are, by their very nature, designed to restrict opportunities for corruption and to expose those who act dishonestly.

- This is mainly due to the procedural disciplines they impose and the financial check-and-balance arrangements they put in place.
Overseeing the necessary Financial Management systems

Oversight must ensure that these systems incorporate:

- modern strategic planning, performance budgeting, costing, accounting, asset management, and reporting requirements
- appropriately qualified financial managers
- tightly regulated supply chain management processes
- active internal control and risk management arrangements
- regular external audits

If properly employed, these systems and practices will eliminate many opportunities and deter would-be perpetrators.

Oversight should go beyond the use of Audits Reports in the monitoring and evaluating of these systems and their application.
3. A dedicated internal Anti-corruption Function

The third crucial area of anti-corruption oversight.

In today’s world the motivation to be corrupt increases daily due to growing materialism and greed - as is promoted by the powerful advertising industry. Organisations, and those that oversee these organisations, have to therefore go even further in deterring people from seeking opportunities to be corrupt.

- Increasingly private companies and government institutions, especially in the more developed world, have introduced a dedicated internal function which utilises a range of additional corruption fighting practices.
- These practices, unlike the defensive nature of the laws and financial management systems, amount to an offensive against opportunities for corruption.
- Typically this function involves a strategically designed Corruption or Fraud Prevention Plan
Overseeing the internal Anti-corruption Function

Oversight should ensure that the function introduces:

➢ The development of the Corruption Prevention Plan which puts in place practical measures to prevent, to deter, to detect, to investigate, and to respond to situations where opportunities can be, or have been, exploited

➢ Competent and specialised officials who manage the Plan.

➢ Extended internal control arrangements and Risk Management practices - including a skilled internal audit function

➢ An on-going assessment of systems and practices in order to prevent or discourage opportunities for corruption

➢ Continual surveillance through which to detect actual incidents of corruption - especially in more vulnerable areas of the organisation.

➢ A policy that all corruption is fully investigated and that action is taken against all those found guilty of corruption.

As with the laws and the financial systems, oversight committees must in the course of their oversight work, regularly scrutinize state institutions to ensure that these strategic anti-corruption practices are in place and are being diligently employed.
The underlying requirement ........ Parliamentarian’s oversight ability

In order to extend oversight into the three areas that have been described, there is an underlying requirement.

➢ Members of parliamentary oversight committees have to have acquired sufficient relevant knowledge and understanding in order to be effective in this more expansive anti-corruption oversight role.

➢ Parliamentarians need not become expert accountants or lawyers, but do need to have an adequate working knowledge of that which they exercise oversight over.
Concluding summary

In fulfilment of their anti-corruption oversight role, Parliamentarians should:

a. more fully utilise their oversight mandate as well as the tools and mechanisms at their disposal

b. direct their activities to the reduction or neutralisation of opportunities for corruption through the three key focus areas

c. acquire an adequate knowledge and understanding of the laws, systems and practices which impact on opportunities for corruption.

d. have the will and dedication to pursue a, b and c above and to do so in a more assertive way.

There is evidence indicating that parliamentary oversight’s fundamental weakness often is its readiness to simply assume that the necessary laws and systems are in place - and are being well managed. This assumption leads to superficial oversight and ineffectual anti-corruption type oversight.