

# High Level Reporting Mechanisms A comparative analysis

Argentina, Colombia, Ukraine, Panama and Peru

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# Acronyms

ANI	Agencia Nacional de Infraestructura / National Infrastructure Agency, Colombia
ANTAI	Autoridad Nacional de Transparencia y Acceso a la Información / National Authority for Transparency and Access to Information, Panama
Basel Institute	Basel Institute on Governance
BOC	Business Ombudsman Council
BOI	Business Ombudsman Institution
CSS	Caja de Seguro Social / Social Insurance Fund, Panama
EBRD	European Bank for Reconstruction and Development
EIB	European Investment Bank
FCP	Fondo Colombia en Paz
HLRM	High Level Reporting Mechanism
IDB	Inter-American Development Bank
IBRD	International Bank for Reconstruction and Development, World Bank Group
IFC	International Finance Corporation, World Bank Group
IMF	International Monetary Fund
MoU	Memorandum of Understanding
OA	Oficina Anticorrupción / Anti-Corruption Office, Argentina
OECD	Organisation for Economic Co-operation and Development
SEPRECO	Secretaría de Alto Nivel para la Prevención de Actos de Corrupción / High Level Secretariat for the Prevention of Corruption, Panama
ST	Secretaría de Transparencia / Transparency Secretariat, Colombia
UADD	Unidad de Admisión y Derivación de Denuncias / Unit for the Admission and Referral of Complaints Argentina
WB	World Bank
WGB	Working Group on Bribery in International Business Transactions, OECD

# 1 Introduction

This report discusses the different contexts and processes through which a High Level Reporting Mechanism (HLRM) has been designed and implemented in Colombia, Ukraine, Panama and Argentina, as well as initial interest in the HLRM model in Peru. Its aim is to understand the specificities of each case and draw lessons applicable to future projects in other countries, whilst respecting the commitment to develop an HLRM that takes account of the specific country's context.

## 1.1 Defining features of a High Level Reporting Mechanism

- An HLRM is a pragmatic, non-judicial tool facilitating the early reporting of potential corruption or similar concerns in order to find quick, cost-effective and practical solutions.
- It is primarily a means for the private sector to raise issues with a high-level office that is external to the public entity where the reported issue has taken place.
- It provides an alternative to traditional law enforcement and administrative procedures, without replacing or undermining them.
- The HLRM aims to protect the public procurement process.
- The structure, procedures, economic sectors and entities subject to the HLRM vary from country to country.
- An HLRM has to take into account the country's legal and political framework. There is no 'one size fits all' and therefore the HLRM is tailored according to the existing institutions within a country and the goals it pursues.
- An HLRM requires political commitment at the highest levels of government in order to ensure its effective implementation and its credibility, particularly given that it is poised between law enforcement procedures and business concerns.

An HLRM can serve a triple function:

- 1) Receive alerts of behaviours, technical issues or even situations that could indicate a potential bribe solicitation in interactions between bidders (in a public procurement context), businesses and governments.
- 2) Provide an alternative, swift and low-cost resolution

mechanism for complainants, enabling a business transaction or a procurement process to proceed without undue disruption.

- 3) Analyse, report and advise governments on issues relevant for business, including the amendment of laws, regulations or procedures to reduce opportunities for corruption.

In 2013, the G20 adopted guiding principles that encourage governments to adopt the HLRM model to address and prevent bribery solicitation by public officials. Since then, the B20 has continued to call on governments to pursue implementation of the HLRM model. The Basel Institute on Governance and the OECD stand ready to advise governments on the design and implementation of an HLRM.

For further information please see Annex 1 (Concept note for governments) and Annex 2 (Useful links and further reading).

## 1.2 Summary of recommendations to governments

Based on the experiences discussed in this paper, the following broad recommendations can help to ensure the smooth development of future HLRMs in all countries and contexts.

To initiate and design an HLRM:

- Political ownership within the country and endorsement at the highest levels of government are essential.
- Leadership of the project should be assigned to an entity, usually located inside the government and provided with sufficient resources to ensure progress within a reasonable timeframe.
- Defining the scope of the HLRM through consultations and liaisons with stakeholders, including the private sector, civil society as appropriate, and relevant government agencies and departments, will create the conditions for its acceptance and relevance.

- The HLRM should address issues that are of importance to the private sector.
  - Careful planning of the HLRM's structure and implementation is critical.
  - Determining how and when to engage with various relevant stakeholders, as well as identifying formal processes (legal or regulatory) and risks, will help to ensure a smooth launch.
  - A communications strategy to disseminate information about the Mechanism, including developing a website which contains links for the electronic submission of alerts and complaints, is also important.
- investigations and to ensure that the HLRM functions efficiently and visibly, ideally for a minimum period of 5 years.
- Technical capacity could be tackled through specific budget provisions, to further enhance the stability of the Mechanism and prevent it from being subject to changes in the administration.

Once the HLRM is established:

- An oversight body, such as a multi-stakeholder committee, could provide a system of checks and balances and ensure the HLRM is effective and fulfils its mandate. This body could review reports and recommendations issued by the Mechanism, monitor results, and provide strategic guidance and suggestions for improvement. Its composition could include persons of standing and integrity from government, private sector, financial institutions, international organisations and civil society.
- Promotion of transparency and awareness of the HLRM, as well as engagement of potential complainants, is essential for the success of the Mechanism. Maintaining a dedicated website with information on the functioning of the HLRM, its procedures, outcomes of past complaints, statistics and the reporting channel should help achieve that purpose.

To promote sustainability of the HLRM:

- A formal commitment to the project should be made by the government to ensure the Mechanism's continuity and reduce risks of political interference. For example, such a commitment can take the form of a Memorandum of Understanding between stakeholders supporting the Mechanism, or anchoring it through incorporation in legal provisions. The latter approach might facilitate the allocation of public funds for its operations.
- The necessary financing should be allocated in order to secure the personnel and resources needed for

# 2 Colombia

Colombia was the first country to implement an HLRM in relation to public tenders in the nationwide 4G road construction project. Since then, the HLRM has evolved as summarised below.

## HLRM Colombia timeline

Early 2011	● Discussion on the HLRM between Colombia, OECD and Basel Institute.
Oct 2012	● Draft proposal for an HLRM presented by Colombia at a side meeting during the Working Group on Bribery meetings at the OECD.
Feb 2013	● Secretaría de Transparencia (ST) begins preparations for launch of the HLRM.
Apr 2013	● Formal launch of the HLRM, including an international expert meeting.
Jul 2013	● Presentation of the Mechanism by ST to pre-qualified bidders at the 4G Roads Project; signature of Integrity Pacts with a clause on the HLRM between National Infrastructure Agency and pre-qualified bidders.
Aug 2013	● Pilot begins.
Early 2014–2015	● First alerts are received and a relevant complaint is addressed by the HLRM in a timely fashion.
2016–2017	● Activation of the HLRM by the Agencia Nacional de Infraestructura (ANI) to procurements carried out by the agency under Public Private Partnerships (PPPs).
2018	● Development of plans by the ST of a series of new HLRMs applicable to the Bogotá Metro, the Peace Fund and the National Highways Agency.
Aug 2018	● The President of the Republic of Colombia, the Mayor of Bogotá, OECD and Basel Institute signed a Memorandum of Understanding to support the implementation of the HLRM for the first line of the Bogotá Metro.

## 2.1 Overview of pilot HLRM

Colombia's President Juan Manuel Santos launched the pilot HLRM on 2 April 2013 and it was operational from October of that year. The initiative was coordinated and hosted by ST, the high-level Government authority in charge of fighting corruption and enhancing transparency in the country and located in the Presidency of the Republic. The National Infrastructure Agency (ANI) was responsible for the procurement process.

All alerts related to the 4G roads project were submitted directly to ST.

The HLRM was triggered when issues were deemed within its scope, such as a lack of clarity on technical aspects of a tender. Four independent experts with backgrounds in criminal law, civil engineering, financial management and public procurement law respectively were selected following an open call for tenders to assess the alerts and to devise solutions that would enable the procurement processes to continue. In addition to standing ready to address alerts raised through the procurement, the HLRM experts developed a matrix to measure corruption risks in tenders for public works, for the use of public authorities.

Potential bidders interested in the 4G roads project procurement process had to commit to using the HLRM by means of an integrity pact signed as a precondition to participating in selected public tenders.

The ST's activation of the experts in response to an issue raised by bidders illustrates the effectiveness of the HLRM. A query was raised by a consortium of bidders after the modification of technical specifications for a tunnel by the procurement agency less than a month before the closing date for the submission of bids. The requested diameter of the tunnel required a boring machine that only one company could offer. The bidding consortium claimed that the modification limited competition without reasonable grounds.

To address this alert, ST set up a meeting with ANI and all the potential bidders to assess how to solve the issue and restore a competitive environment. This dialogue relied on the experts' inputs and led ANI to conclude that there were no reasons not to modify the technical requirements to allow offers from more bidders, thereby ensuring equitable chances for all participants to compete. The entire process from alert to resolution took not more than a couple of weeks; the HLRM protected the procurement process and ensured fair competition. The solution involved all the bidding companies, the experts, ANI and ST. It was regarded by all as a transparent and fair resolution process.

After the successful application of the HLRM in the pilot 4G roads project, application of the HLRM was informally expanded to address concession infrastructure contracts carried out for Ernesto Cortissoz International Airport in the city of Barranquilla between the end of 2014 and May 2015.

Between 2016 and 2017, ANI activated the HLRM with regard to all procurements carried out by that agency for high-value projects, including the construction of roads, airports and railroads under the country's PPP framework. ANI provided funding for the HLRM for this stage of work through December 2017 and hired three of the four original experts to serve on the HLRM (the criminal law expert was not rehired). No complaints were submitted during this phase of the HLRM, a fact attributed by ANI to the deterrent effect of the Mechanism.

## 2.2. New HLRMs planned in 2018

The Colombian Government decided to expand the HLRM's scope of application to three additional areas: i) post-conflict projects contracted by Fondo Colombia en Paz (FCP) as part of the peace process; ii) the construction of Bogotá's first subway line (Metro de Bogotá); iii) five tenders to be contracted by Invías (National Highways Authority) for the construction of roads under the project Ruta del Sol 2. It was acknowledged that new HLRMs would need to be created for each of these projects to reflect the diversity

of the expertise needed in each case and the different tendering procedures of each of these projects. The new HLRMs were scheduled to be implemented through 2018 under the leadership of ST and with the support of the OECD and the Basel Institute. As of mid-2018, only the Metro de Bogotá is proceeding, and a Memorandum of Understanding was signed by the Government of the Republic of Colombia, the Mayor of Bogotá, the OECD and the Basel Institute to support its implementation. The status of the other planned projects as of August 2018 is set out below.

### Bogotá Metro

The Bogotá Metro project involves the federal Government partnering with the municipality of Bogotá. The HLRM's scope for this procurement will be defined by the ST in collaboration with the Metro Enterprise and senior officials of the District of Bogotá. This major infrastructure project is scheduled over five years and is co-financed by the central Government and the District of Bogotá.

The syndicated loans involve three multilateral development banks: the Inter-American Development Bank (IDB), European Investment Bank (EIB) and World Bank (WB). This in turn has meant that the rules for the procurement process are the IDBs' rules, and not Colombian public contracting law. The ST negotiated with the IDB and they jointly agreed to include the HLRM in this procurement process after determining the HLRM's compatibility with the IDB's own integrity processes, in particular relating to confidentiality issues and the HLRM ad hoc committee's powers to investigate once a complaint has been filed. The construction of the metro is due to start in 2018 with a pre-qualification phase that could take up to eight months.

ST is continuing to work with the Bogotá Metro and the District Oversight Office (Veeduría Distrital) in the preparation of the profiles for the ad hoc committee members and the hiring procedures, with the aim of including national and international experts. ST would like the IDB to oversee the hiring process to ensure its independence and transparency. The HLRM ad hoc committee will also be tasked with delineating and establishing the basis for the compliance policy of the metro.

The related MoU signed by the parties mentioned above on 6 August 2018 should facilitate the integrity and transparency of the first metro line project in Bogotá. It is designed to allow for the speedy analysis of complaints related to corruption, generating early warnings and a pragmatic and transparent response from Colombia. It also aims to promote the transparency of the tender processes that are being developed and facilitate interactions between public and private stakeholders.

#### **Peace Funds projects**

The Colombian authorities are considering applying the HLRM to the following major initiatives as part of the FCP: small public works (PIC II) at the community level; audits related to PIC in both phases I and II; and the information system that will support the Special Jurisdiction for Peace (in charge of investigations, sanctions and redress of victims of the armed conflict). The aim would be to apply the HLRM to the pre-tender and tender phases of these projects. Discussions are ongoing on how the planned HLRM model for the FCP can be adapted to the new design of the Peace Fund.

#### **Highway projects**

The HLRM is under consideration for five highway projects to be funded by ANI. ANI has also taken the significant step of modifying its contract manual to enshrine the obligation to have HLRMs in future large public tenders.

## **2.3 Analysis**

The Colombian HLRM pilot was mainly a Government-driven initiative with leadership at the highest level ensuring that it was developed quickly and with full political ownership. The Presidency led horizontal coordination across Government bodies to:

- identify priority areas of application for the pilot;
- customise the HLRM so that it could reflect the local reality and respond to demands in a pragmatic manner;
- devise innovative solutions to overcome resource constraints;

- take a step further to apply the fast-track and problem-solving procedures of the HLRM to other alerts on public tenders submitted to ST, even when not subject to the application of the pilot;
- creatively rework the original concept to aim at the prevention of corruption in post-conflict initiatives involving the transfer of large sums of public funds.

Colombia has tailored the HLRM to meet its needs and to foster public trust in the Government. The public officials in charge of the pilot Mechanism, both at ST and ANI, have developed creative solutions to overcome bureaucracy and lack of both financial and human resources to advance with the HLRM and ensure its continuity. The swift handling of the query raised in relation to the tunnel specifications under the pilot HLRM, along with the positive outcome, contributed to the building of trust in the HLRM and demonstrated its utility to the public sector.

Although the initial pilot HLRM proposal elaborated by Colombia included a provision for the creation of a permanent advisory council to oversee the implementation of the Mechanism and set its strategic goals, in practice the council was never established.

If the fully Government-driven initiative proved positive to set up the HLRM informally and swiftly, the lack of participation of external stakeholders (private sector and civil society, among others), in the conceptualisation and oversight of the implementation of the Mechanism may risk reducing its legitimacy and trust by potential users. In the case of the pilot, however, this was countered by the obligation for bidders to use the HLRM through the Integrity Pacts.

The lack of public information, such as on a website, reduces overall understanding of the potential use and benefits of the HLRM and commitment to resort to it. An oversight body, such as the planned but not implemented advisory council, could enhance legitimacy through greater transparency and checks and balances on the HLRM.

Since there were no institutions preceding the HLRM in Colombia, there were therefore no pre-established rules clarifying the criteria for the selection of experts, submission of alerts, procedures to execute solutions or rules on conflict of interests. ST has therefore developed the HLRM informally based on its own precepts and in so doing has identified the recruitment and management of the experts as a particular challenge given the low and irregular volume of alerts.

The informal configuration of the HLRM in Colombia has created difficulties in allocating public budget specifically to the project. For the pilot phase, funding for the development of the Mechanism, as well as its sustainability (to cover, for examples, the services provided by the ad hoc group of experts), was initially allocated from the overall budget of ST.

The pioneering Colombian example has served as a strong role model in the region and has encouraged other countries to adapt the HLRM to their own requirements.

# 3 Ukraine

## Ukraine Business Ombudsman Institution timeline

Sep 2012	● Discussions between EBRD and Ukraine's Government on an anti-corruption initiative begins.
Apr 2013	● Fact-finding mission by Basel Institute to Ukraine commissioned by EBRD.
Jun-Jul 2013	● Multi-stakeholder group discusses key elements for an MoU framework on anti-corruption initiatives and an HLRM-type mechanism.
Nov 2013	● Cabinet of Ministries of Ukraine approves draft MoU. Victor Yanukovich refuses to sign it.
Spring 2014	● Re-engagement on the MoU with the new Government of Ukraine.
12 May 2014	● Signature of MoU on the Ukrainian Anti-Corruption Initiative, which established principles for creating a Business Ombudsman Institution.
May-Jul 2014	● Multi-stakeholder meetings to establish Business Ombudsman and legal framework.
26 Nov 2014	● Cabinet of Ministers of Ukraine issues Resolution n. 691 to establish the Business Ombudsman.
22 Dec 2014	● Appointment of Algirdas Šemeta, former EU Commissioner and Minister of Finance of Lithuania, as Business Ombudsman.
May 2015-present	● The Business Ombudsman Council (BOC) begins operations in May 2015. Activities and impact of the BOC are made public on the BOC's website. The BOC has actively participated in the elaboration of a draft law to strengthen its institutionalisation. The bill is pending parliamentary consideration.

The context for the implementation of an anti-corruption reporting mechanism in Ukraine was quite different from the one observed in Colombia. Whereas in the latter, the driving force for the design and implementation of an HLRM came from the Office of the President of Colombia, in Ukraine the major actor driving the implementation of an HLRM was external. The European Bank for Reconstruction and Development (EBRD), as the major foreign investor in Ukraine, decided to address concerns about corruption affecting the private sector. EBRD conditioned the continuity of its activities in the country on the implementation of a series of initiatives by the Government to target corruption, including an HLRM or similar mechanism.

Conversations for adapting the HLRM concept to Ukraine started between EBRD's President Suma Chakrabarti and then President Viktor Yanukovich, and continued through changes of government. The box on the left sets out the timeline to establish the Mechanism.

## 3.1 Overview

The BOC was developed as a result of multi-stakeholder discussions led by the EBRD and facilitated by the Basel Institute. The BOC has adapted the defining features of an HLRM in a uniquely context-sensitive way. For example, it was felt that businesses would not trust a government-led body due to concerns about the integrity of senior members of the government.

As a consequence, the BOC was set up to operate independently of the government. It maintains however, the 'high-level' feature of the HLRM through the participation of the Ukrainian Cabinet of Ministers as a member of the BOC's multi-stakeholder Supervisory Board. The BOC is supported by the following framework:

1. MoU for the Ukrainian Anti-Corruption Initiative was signed on 12 May 2014. Governing principles for a Business Ombudsman Institution were established by the MoU, with the aim of fostering the investment climate

in Ukraine through accountability and transparency. The MoU also set the foundations for the creation of the BOC as a legal entity. The resulting bill awaits parliamentary approval as at August 2018.

2. Resolution 691 of the Cabinet of Ministers of Ukraine of 26 November 2014, establishing the BOC as a standing consulting and advisory body to the Cabinet. The Resolution sets as one of the goals of the BOC the preparation of legislation to establish the Business Ombudsman as an institution.
3. Protocol of Support to the MoU signed by the IFC and the International Bank for Reconstruction and Development, acknowledging the need for substantial efforts to address corruption and the unfair treatment to business to advance economic growth and expressing their support to anti-corruption efforts.

The BOC is comprised of i) a Business Ombudsman; ii) two Deputies; iii) a group of investigators; iv) a Supervisory Board.

The Supervisory Board, which acts as the governing body of the BOC, oversees the operation of the BOC and its compliance with the underlying terms and goals of its creation. It functions as a tripartite governing body and includes representatives of the Group of Parties signatories of the MoU, namely the Cabinet of Ministers of Ukraine, international institutions (EBRD and OECD) and independent business associations. Each block is assigned one vote in all decisions, which ensures equilibrium for the governance of the BOC.

Once a complaint is assessed as being reasonably well founded by the BOC, it is brought to the attention of the relevant authorities. The BOC leadership holds meetings with governmental authorities on a regular basis or upon request, during which the progress of complaints is reviewed and the implementation of the BOC recommendations is discussed. The BOC may, for example, request clarifications or inform authorities about potential misinterpretations of laws or regulations by government staff and agree on the rectification of wrongdoings within a specified timeframe.

Several Memoranda of Partnership and Cooperation were signed with different governmental institutions to facilitate the dialogue with the government and the establishment of a direct communication channel to discuss complaints and find solutions. In addition, the BOC identifies and issues recommendations on alternatives to address systemic matters through reports published on various topics. It further issues quarterly and yearly reports of its activities and substantive analysis, all available online.

The BOC also monitors the implementation of recommendations and holds meetings with different members of the Government, including the Prime Minister, to discuss successes as well as ongoing issues.

Finally, in 2017 the BOC launched, together with the OECD and the EBRD, the Ukrainian Network of Integrity and Compliance, an anti-corruption certification initiative primarily focusing on the private sector. The purpose is to promote transparency and compliance, engaging companies participating in the Network to commit to – and enhance – their standards of integrity in doing business.

## 3.2. Analysis

In Ukraine the initiative to implement a reporting mechanism was guided from the beginning by multi-stakeholder engagement. The Ukrainian Government, businesses, civil society and international organisations were actively involved in the process of conceptualising the Mechanism in a way that was suitable for the context. This multi-stakeholder engagement was clearly beneficial to ensure broad support and legitimacy to the initiative.

The EBRD's extensive experience and understanding of the political context in Ukraine, as well as its significant leverage as a major investor in Ukraine and direct access to senior decision-makers were critical components contributing to the success enjoyed by the Mechanism so far.

The project has further benefited from the experience of the Basel Institute and the OECD gained when advising on the establishment of the HLRM in Colombia, and the continued legal and conceptual advice provided by the Basel Institute during the development phase of the project. The OECD has supported the BOC from its inception and participates, together with the EBRD, in the meetings of the Supervisory Board.

The IMF has also actively provided support to the Anti-Corruption Initiative. The letter of Intent of Ukraine to the IMF dated 1 September 2016 includes a paragraph stating the country's commitment to adopt a law on the Business Ombudsman consistent with international practice. In addition, the 2017 IMF Article IV Consultation Report on Ukraine made reference to the Business Ombudsman, its positive results and the draft legislation.

When it comes to implementation, the publicity of the BOC reports, coupled with government leaders' knowledge of facts, has resulted in a significant degree of cooperation between the BOC and the entities that were on the receiving end of the BOC recommendations. The BOC has thus become a well-known and respected institution in the fight against corruption in the country, largely a result of the integrity and vigorous engagement of the current Business Ombudsman.

The independent nature of the BOC shields it from interference by the government and has allowed it to be regarded as trustworthy among businesses and individuals, best exemplified by the increasing number of cases submitted to it, mostly by SMEs.

The BOC takes on average three months to process complaints and the implementation rate of recommendations by official authorities is around 87%, which is significant considering the Mechanism's lack of enforcement powers. From the start of its operation until December 2017, the BOC received more than 2,900 complaints. The direct financial impact of its operations for businesses during the period 2015–2017 is estimated to surpass UAH 11 billion (USD

405 million). The satisfaction rate of complainants resorting to the Mechanism is consistently around 95%.

One of the challenges faced by the BOC is its long-term financial sustainability. Funding was established through the EBRD-Ukraine Stabilisation and Sustainable Growth Multi-Donor Account set up by the EBRD in 2014. It allocated USD 3.4 million to ensure the functioning of the BOC for two years. The EBRD has secured funding until about mid-2019, but there are no guarantees that donors will be prepared to renew their financial commitment to the initiative after that. It is therefore important that the local parties to the MoU gradually commit their own financial resources for the continuation of the BOC.

The decision to ground the legal basis of the BOC in a resolution by the Cabinet of Ministers was justified on the grounds of expediency and to capitalise on political momentum when the new Government took office. This approach enabled the BOC to commence work quickly. However, the BOC would undoubtedly benefit from the proposed draft law to establish it as an independent and permanent institution, which is currently under consideration by the Ukrainian Parliament.

# 4 Panama

Interest in developing an HLRM in Panama emerged from a conference on the HLRM concept held in Bogotá in 2014 and hosted by the UK Embassy, with the participation of the OECD and the Basel Institute. Following the change in Government in Panama, the Basel Institute was approached to conduct an onsite scoping mission, which was partly facilitated by the UK Embassy in 2014.

The anti-corruption agency was selected by the Panamanian Government to host the HLRM and it was launched in 2016. It has, however, remained dormant, subject to final approvals within the Government.

## HLRM Panama timeline

Jul 2014	● Discussions on the HLRM between Basel Institute and Panama.
6 Oct 2014	● Expression of interest by Panama's Ministry of Public Works to develop an HLRM for tenders in the infrastructure sector.
11–13 Feb 2015	● Scoping mission by the Basel Institute. The Panamanian Government later decided to apply the HLRM to tenders in the social security organisation and health sector.
Dec 2016	● Internal report assessing corruption issues in public procurement in the health sector in Panama, scope and impact of the HLRM in retrospect.

than the infrastructure sector. As a result, the HLRM would become applicable to public procurement carried out by Caja de Seguro Social (CSS) – the social security entity managing one of the largest public health budgets in Panama. ANTAI remained in charge of leading the implementation of the Mechanism. The original date of launch of the HLRM was maintained.

A technical proposal for the implementation of the HLRM illustrated the modification of the application of the Mechanism from infrastructure to the health sector. The proposal was inspired by the Colombian HLRM structure and experience. The HLRM, called Secretaría de Alto Nivel para la Prevención de Actos de Corrupción (SEPRECO), had a structure quite similar to the Colombian HLRM model. It was further decided that civil servants from ANTAI would staff the Secretariat.

The Mechanism was publicly launched in Panama City on 30 March 2016 by the Vice President, with the presence of representatives of the public and private sectors, civil society and media. The start date for the functioning of SEPRECO was announced for 1 May 2016.

The Mechanism remains inactive pending the approval of the internal regulation to establish SEPRECO, which was forwarded in 2016 to the Office of the Comptroller General of the Republic (CGR) for endorsement; this has not yet been granted. CGR also holds a reporting mechanism function and was one of the alternatives envisaged to host the HLRM.

## 4.1. Overview

The Government originally envisaged the HLRM to apply to tenders in the infrastructure sector, in contracts offered by the Ministry of Public Works. The Vice President of Panama selected the National Authority for Transparency and Access to Information (ANTA) to champion the HLRM and for it to host the Mechanism.

In 2015, however, the Government of Panama changed the area of focus of the pilot HLRM to target public health rather

## 4.2 Analysis

An effective HLRM in Panama has not yet been established due to political, technical and project management challenges. Politicisation is not necessarily an issue per se, but can become one when key decisions for the establishment of the HLRM are not aligned with the role that the HLRM can play in preventing corruption. In this case, the Panamanian Government focused on the CSS as an entity in need of reform and sought to use the HLRM to achieve that end.

# 5 Argentina

The Basel Institute and the OECD have been working with the Argentine Anti-Corruption Office (OA) under President Macri since mid-2016 on the concept of an HLRM for the country. From an early stage these discussions focused on Argentina's proposals for PPP contracts. Progress in these discussions was made with increasing rapidity towards the end of 2017 in line with the proposed PPP timetable. The Highways Authority is piloting the HLRM with the first PPP scheduled for 2018, and the first round of contracts were awarded mid-year.

PPPs are a new concept for Argentina. Legislation and regulations were first developed in 2016–2017 with support from external consultants. The Government seeks to attract foreign investors through the PPPs to meet the demand for infrastructure improvements. This policy follows a long period of economic uncertainty and mistrust by foreign companies due to expropriations and other actions taken by the previous Government. A new PPP Unit has been established at the Ministry of Finance to oversee all the PPP projects.

## HLRM Argentina timeline

2016–2017	● Initial consultations between the Argentine Government and the OECD and Basel Institute regarding the HLRM concept and its potential application in Argentina.
Feb 2017	● Passage of Decree 117/2017, implementing Law 27328 of 2016 creating a new regime for PPP contracts in Argentina.
Oct 2017– Jan 2018	● Scoping mission by the OECD and Basel Institute to consult with relevant Government and external stakeholders and develop and debate on technical options for the HLRM.
Jan 2018	● Launch of the HLRM.

## Pilot PPPs under the Highways Authority

The current concessions relating to management and improvements to the highways expired in April 2018. This has provided an opportunity to introduce the new PPP contracts

in accordance with the new law and Government policy that includes improvements based on reducing travel time, reducing costs, improving road safety and creating new jobs.

The aim is to develop 7,500 kilometres of new highways and safe routes with a long-term plan spanning from 2015 to 2027 and costing USD 35 billion. The current phase 2015–2019 will involve expenditure in the region of USD 12 billion.

The Highways Authority created an ethics and transparency unit and developed a reporting hotline in the last few years. This paved the way for the introduction of the HLRM, as the concept of reporting issues has been developed within this Authority together with the Office of Anti-Corruption (OA) in the recent past.

Between October 2017 and January 2018, the OECD and the Basel Institute met with relevant Government and external stakeholders in Argentina and proposed various options for the Government to consider in establishing the HLRM.

## 5.1 Overview

Argentina launched its HLRM in January 2018. It is located under the Secretary of Public Ethics, Transparency and the Fight Against Corruption (Secretaría de Ética Pública, Transparencia y Lucha contra la Corrupción) within the OA. In the pilot phase, it will apply to PPP contracts in relation to the extension and improvement of the national road system under the Ministry of Highways. Following receipt of a report, the Unit for the Admission and Referral of Complaints (Unidad de Admisión y Derivación de Denuncias or UADD), which is within the OA, will carry out an assessment of the issue to determine whether it falls within its scope. An issue is 'within the scope' when it raises an issue within one or more of the following categories:

- Bid-rigging or other indications of potentially collusive behaviour;
- Bribery or attempted bribery;
- Conflict of interest;

- Influence peddling;
- Any action or decision by anyone that could create unfair conditions or unfair treatment for bidders.

A decision about the admissibility of a report will be carried out within 48 hours (two working days). If the report is admissible, the UADD will inform the HLRM (composed of the Secretary for Public Ethics, Transparency and the Fight Against Corruption, the Undersecretary of Integrity and Transparency, and the Undersecretary of Anti-Corruption Investigations). The HLRM will convene a Group of Experts in order to address the issue together, with the goal of finding a quick, practical and fair solution. The Group of Experts should be constituted with the following persons:

- Two technical representatives proposed by the College of Engineers;
- A technical representative proposed by the OA;
- A representative of the Anti-Corruption Studies Centre of the University of San Andrés (Buenos Aires).

The HLRM will:

- Work with the Group of Experts to address the issue(s) being raised, with the aim of finding a fair and practical solution so that the procurement process can continue, if possible without any delays or even without having to stop altogether;
- Decide whether the report should be closed without further action being taken or it may make recommendations to the Government agency responsible for the PPP process. In the pilot phase of the HLRM this will be the Ministry for Highways;
- Oversee the implementation of any recommendations;
- Make its recommendations and decisions public;
- The report will usually be addressed according to the procedures within 10 working days. In exceptional circumstances this time limit may be extended by the HLRM;
- The reporting party will be informed of the outcome of the assessment.

## 5.2 Analysis

The HLRM in Argentina is still in its early stages of implementation so it is too soon to assess its effectiveness. However, in the first phase of tenders the HLRM reporting channel was used on five occasions, though none of the reports were relevant to the scope of the Mechanism and did not raise serious allegations of any kind. The first tender round included some 30 consortia taking part with about a dozen local Argentinian companies participating. Ten bidders were awarded contracts in the first phase. The participation of such a large number of bidders was reported as being surprisingly high in the uncertain economic climate, no offers were considered invalid and no companies were rejected. The only criterion for selection was price and a cumulative threshold was used to prevent multiple contracts being awarded to a single company.

There are however, some noteworthy differences between the Argentinian HLRM and other models. First, the HLRM permits alerts to be raised by civil servants involved in the PPP procurement, as well as bidders and other interested parties. This broadens the scope of persons who can raise issues well beyond those in Colombia and Panama.

Secondly, the HLRM has been publicised on the websites of the OA and the Highways Authority conducting the procurement. Other than the website established by the BOC in the Ukraine, the Argentinian step to issue information and frequently asked questions on their HLRM is a first in Latin America. For countries that are seeking to develop trust with the private sector and citizens, creating a website that is updated and informative is a good starting point.

Thirdly, the HLRM is being piloted in the context of the PPP, so both the Mechanism and the framework in which it is being deployed are new and untested in Argentina. This is a courageous step and perhaps indicative of the Government's stated aim of delivering change in relation to tackling corruption.

In conclusion, the swift introduction of the HLRM demonstrated to all stakeholders and in particular the private sector the Government's intent to address corruption in procurement in a business-oriented manner and through a new method. Secondly, the cooperation across Government entities, including the Office of Anti-Corruption and the Highways Authority was highly constructive. This bodes well for other ideas that are perhaps untested and novel but which could help develop the anti-corruption agenda further. These preliminary positive outcomes of the HLRM help describe how corruption can be tackled not only in Argentina but elsewhere and may encourage others to test new approaches in a similar manner.

# 6 Peru

The Government of Peru first expressed interest to the Basel Institute and OECD in developing an HLRM in 2014. This was followed by a scoping mission in 2015 that reviewed the status of complaint mechanisms within the various Government ministries and in relation to public procurement and supplied a commentary to the Government in late 2015.

Discussions within the Peruvian Government have continued since 2016 with varying levels of intensity subject to political developments and elections. At the same time interest by various Government authorities has increased with, for example the organising of conferences to discuss the HLRM such as that hosted by the Comptroller General (Contraloría), attended by some 500 participants in October 2017.

Interest in an HLRM was still apparent within the Government at the end of 2017, and the Prime Minister indicated his strong support once more for the introduction of a Mechanism in mid-2018. Other stakeholders have also cited the need for the private sector to have recourse to a tool to address bribe solicitation, and so the time appears to be ripe for a HLRM.

The OECD and the Basel Institute have continued to support and encourage the Government to define its goals and to embark on the process of delineating an HLRM suitable for its requirements.

# 7 Comparative assessment

The current versions of the HLRM illustrate the variety and flexibility of this tool. The scope of applicability has ranged from permitting alerts to be raised on specific issues relating to bribery and corruption (Argentina), to the bidding process (Colombia), to the broader concept of the unfair treatment of business (Ukraine).

Ukraine's Business Ombudsman is rather different to the HLRMs in Latin America in several respects. In addition to receiving and assessing complaints, the BOC provides recommendations to state and municipal authorities in relation to acts and omissions, as well as the implementation of policies and other measures to improve and facilitate doing business, combat corruption and prevent other violations of legitimate interests of businesses. The BOC also issues reports identifying systemic issues to be addressed by the Government. In Colombia, the external experts were tasked with identifying systemic issues related to bribery in procurement when they were first appointed, but Argentina and Panama have not opted to deploy experts in this way. In Argentina, the experts are solely focused on the elements related to the procurement of the highways under the PPPs in the context of the HLRM.

The persons who may report also varies from country to country. In Argentina this includes public servants involved in the PPP procedures as well as bidders, whilst in the pilot phase in Colombia only the pre-selected bidders could raise issues. In Ukraine, the Ombudsman accepts complaints from citizens as well as firms, subject to other procedural criteria being met.

Argentina and Colombia have cited the importance of developing trust between the government and the private sector to encourage the reporting of issues. In Colombia, Integrity Pacts were used to bind the bidders to use the HLRM, whereas in Argentina the Highways Authority established a policy document that references the HLRM as the means to raise alerts for persons associated with the PPP processes. Whilst these are binding on the companies, the issue of trust in the security of the reporting channels has also been cited as essential to encourage companies and the public sector

(in Argentina), to raise reports. Developing trust was also clearly an issue for the BOC in Ukraine in an environment of weak security and political volatility. This was tackled at the outset by choosing the Ombudsman with great care: a person of integrity, a holder of high public office, coming from outside the country, and with the strength of character to take an active approach to the mandate was appointed to the position.

The scope of the HLRMs has also varied in terms of the timeframe they cover. In Colombia it has so far been only up to the end of the bidding phase and not beyond, though the execution phase is planned to be included in relation to the ANI projects in the future. In Argentina, the cut-off is 48 hours before the end of the bidding phase; after that period, law enforcement and judicial procedures take over as necessary. The BOC in Ukraine has limited powers of investigation and ability to compel the production of evidence, although this may change once the legal framework is fully established and the pending law is passed by Parliament.

All the Mechanisms aim at delivering speedy solutions. The Colombian query on the specification for the tunnels is a good illustration of this, taking two to three weeks to resolve. The BOC publishes the average resolution time involved in handling complaints (around 80% within 10 days). Argentina has stipulated clear timeframes in its HLRM.

In all HLRMs, including the BOC, long-term sustainability remains an issue that needs resolution to ensure funding is adequate, unfettered and not associated with political conditions.

A public website and information dissemination are important to communicate what the HLRM is aiming to achieve and to create awareness and knowledge about the HLRMs for the potential users. This is acknowledged by ST in Colombia, although thus far it has not established one. The new project should provide another opportunity to remedy this situation. Public hearings and private sector conferences to talk about the HLRMs attended by senior government representatives have also helped to publicise

the Mechanisms in all cases. The Presidents of Argentina and Colombia and the Vice President of Panama, as well as the two Secretaries of Transparency in Colombia, have all promoted and supported their respective HLRMs, as has the Head of the Anti-Corruption Office in Argentina. In Panama, the high-level Government support for the HLRM that was apparent at the launch event receded thereafter. Renewed political will could enable the Mechanism to function in the future.

The Mechanisms that have been activated, even on an informal basis, have created a level of trust and confidence that augurs well for their continued deployment. Nothing should be taken for granted, however. It is important to continue to support the creation of strong legal bases, secure funding, publicise results and analyse the Mechanisms' impacts to ensure that the HLRM remain a useful and well-used tool by business and other stakeholders.

## 7.1 Points to consider when designing an HLRM

Despite the different applications of the HLRM in Argentina, Colombia, Ukraine, Panama and Peru, some general points are important to consider when developing the HLRM for a specific country and purpose.

The list below complements the guidance note for governments in Annex 1, which was developed by the OECD and Basel Institute on Governance and is available in English, Spanish, French and Portuguese. It contains suggestions for governments, private sector actors and civil society organisations who might consider developing or promoting the development of an HLRM as a corruption prevention mechanism in a country. Any HLRM will need to be tailored to take account of the specific country's needs and its existing legal system and political institutions. The sequence of the points below is neither precise nor chronological; some activities overlap and some may not be relevant to a particular country.

1. Develop the goals of the HLRM (what should it address and seek to achieve?). These goals may be articulated in the government's (anti-corruption) strategy, but a consultation processes could also be launched to canvass business and civil society representatives, as well as other stakeholders such as relevant government departments. Consider whether external advisers such as the OECD and Basel Institute would be useful to help in this process.
2. Consider funding and budgetary requirements for the HLRM over 1–5 years.
3. Decide where it should be hosted. Within a government agency, or do exceptional circumstances make it necessary to establish it externally?
4. If the HLRM is hosted within the government, will it be created as a standalone (new) institution or as part of an existing agency/government department?
5. Investigate the availability of a reporting channel (telephone hotline/web-based system). If none currently exists, develop detailed plans to establish it from scratch (costs, time, training, human resources and procedures).
6. Develop an appropriate structure for the HLRM, such as a Secretariat appointed specifically for the HLRM, an ad hoc or permanent body of experts and the inclusion of an oversight body (considering its remit, staffing, governance).
7. Consider the legal aspects. Is a law, regulation, cabinet resolution or presidential decree needed? Would an informal arrangement suffice?
8. Identify a pilot project (government tender for infrastructure or similar), timeframe and framework to review and adjust the HLRM as necessary.
9. Develop a communications strategy, including a website for the HLRM and the dissemination of information on reporting channels to persons entitled to raise alerts.
10. Plan the high-level launch and media releases.

# Annex 1: Concept note for governments

## Designing a High Level Reporting Mechanism for Business - A Guidance Note for Governments

A High Level Reporting Mechanism (HLRM) is a tool that can:

- Provide a constructive approach for companies and governments to deal with bribery solicitation;
- Improve the prospects for foreign direct investment;
- Create trust and transparency for business;
- Be adapted to different legal or institutional contexts, making it a swift and flexible method to obtain practical results.

The HLRM concept was originally developed by the Basel Institute on Governance, OECD and Transparency International together with a group of international companies seeking alternatives to cumbersome and slow judicial processes: The HLRM is not a legal mechanism, and functions alongside law enforcement institutions.

HLRMs have been further specified and tested in a joint Basel Institute - OECD programme to put into operation the call made by businesses to G20 governments in 2012 to “establish appropriate forms of ‘high level reporting mechanisms’ to address allegations of solicitation of bribery by public officials”. In 2013, the G20 adopted guiding principles encouraging the establishment of “easily accessible channels for companies and individuals that have been solicited to report to public authorities”, and the B20 in 2014 and 2015 continues to promote the establishment of HLRMs in G20 member countries.

The Basel Institute and OECD offer support to governments to ensure an efficient approach to developing HLRMs which may include identifying relevant domestic stakeholders, evaluating different institutional and legal options in a given jurisdiction, as well as accompanying the development, implementation and monitoring of the HLRM to get it up and running in a reasonable time frame.

This document, which is non-prescriptive in its approach, provides general guidance to governments on how to develop and manage a HLRM. The note consolidates knowledge regarding similar mechanisms from various sources, including preliminary lessons drawn from practical experience in establishing two such mechanisms in Colombia and Ukraine.

## Background

Companies around the world are frequently confronted with explicit or implicit requests for bribes in their dealings with government administrations, for example in the context of public procurement procedures, business permits and licenses or tax audits. Companies may also have to contend with unfair treatment creating uncertainty in the business context that could lead to a situation in which a bribe might be paid. Specific, rapid actions are required in such cases as companies face serious legal consequences if they resort to bribery, or they may risk losing business or face obstructions if they refuse to pay bribes. In some circumstances, local and foreign companies will disengage from government business, or leave a country entirely where lack of transparency and corruption levels make acting with integrity too difficult.

In such situations, a solution is required that allows companies to make complaints safely through a dedicated channel that does not involve the agency that is the subject of the complaint, and obtain swift remedial action. This kind of mechanism is all the more critical in countries with weak governance structures, and or, an inadequate judiciary due to concerns about the efficiency or independence of these institutions, and where existing reporting mechanisms have failed to provide rapid, impartial and constructive responses that are needed by businesses when faced with extortion or they are treated unfairly. It is these concerns that the concept of a High Level Reporting Mechanism seeks to address.

## What is a High Level Reporting Mechanism?

**An early recourse for companies.** A HLRM is an in-country process for receiving, assessing, and quickly resolving complaints from companies confronted with bribery solicitation or other similar concerns in specific administrative processes or public projects. The primary purpose is to provide an early and independent point of recourse to companies and to propose, wherever possible, a 'quick fix' before the situation escalates.

**An alternative and complement to other dispute resolution systems.** A HLRM offers companies an alternative to legal or administrative systems or public accountability mechanisms, or national and international mediation/arbitration. HLRMs differ from these forms of dispute resolution in that they offer a simplified, faster way to settle issues, while still recognizing the right of companies to take their grievances to courts or other mechanisms, as HLRMs do not provide legal remedies. They are also distinct, as - unlike many other legal or quasi-judicial mechanisms - they do not require the company to show a breach of standards.

**A mechanism built on principles that can be adapted to each jurisdiction's particular context:** The HLRM is not a rigidly defined mechanism: There is no one-size-fits-all approach, and a HLRM can take different forms. For example, a single HLRM can respond to a broad cross-section of industries, or it can be tailored to a specific industrial sector, or serve the requirements of business in relation to a particular public process (e.g. business licensing, customs/tax clearance, public procurement). A HLRM can also start out on a small scale as a pilot, before being rolled out more broadly. Whichever form and scope it takes, it should however embody a set of principles and functionalities:

- **A focus on bribe solicitation.** A HLRM is specifically designed to address the "demand side" of bribery by responding rapidly to incidences - explicit or indirect

requests - faced by companies in their dealings with public officials. The focus of the mechanism is substantiated by the fact that companies are directly, and in some cases significantly, affected by solicitation of bribes or extortion but often lack viable options for raising their concerns through more formal structures such as the courts. A HLRM provides a readily accessible means for businesses to address bribery-related issues - directly, rapidly, and informally.

- **A mechanism that fits into the broader anti-corruption system.** HLRMs are intended to be complementary to other anti-corruption efforts. They are not intended to replace other reporting mechanisms nor to undermine existing legal processes but rather to complement them by providing an avenue to companies that seek a more informal and trusted platform through which to address their grievances and obtain a speedy response to resolve issues. A HLRM should thus not inhibit access to judicial recourse or other accountability mechanisms. Businesses must be clearly informed of their rights to use alternative remedies if they choose to do so without turning to the HLRM or if they are not content with its response. For the same reason, it should be made clear that any grounded suspicion of bribery or other criminal, administrative matters will be referred to the authorities.
- **Legitimacy and strong commitment from the highest levels of government.** The HLRM must have clear, transparent and sufficiently independent governance structures to ensure that no party to the complaint can interfere with the fair conduct of the resolution process. As a prerequisite for this, the HLRM should offer a reporting channel that is above and independent of the agencies whose employees are alleged to be soliciting bribes. Participation of all stakeholders early in the mechanism design process can also help ensure greater trust and buy-in from them. Without strong commitment from the top levels of state authorities, the HLRM is however likely to be ineffective or underutilized.
- **Appropriate protection:** A mechanism that prevents retaliation. A HLRM will only work when companies are encouraged to share their concerns freely, without fear of retribution. Coming out with a complaint concerning

bribery can pose risks for companies. A HLRM should incorporate ways to prevent harm. These precautions may include a policy of non-retaliation, measures to ensure confidentiality, safeguarding of personal data collected in relation to a complaint, and an option for complainants to submit anonymous complaints where necessary.

- **Engaging all parties:** A Mechanism based on dialogue. One of the strengths of a HLRM is its power to use informal means for quick problem solving. The power to initiate a dialogue with the complainant company in formal and informal settings, including where possible (i.e. when there is no fear of retribution for openly voicing complaints) with managers from the agency about which the complaint has been made, is important as a means of resolving disputes expeditiously. It may also help prevent a conflict from escalating.
- **A dedicated and thorough follow-up.** The HLRM is dedicated to follow-up to any pertinent matter that is reported. Whenever possible, a resolution will be sought by the mechanism's implementing institution itself. When law requires for the matter to be transferred to another competent authority, the HLRM will continue to follow the resolution process to ensure swift and appropriate outcomes.

## How does a High Level Reporting Mechanism Benefit Companies and Governments?

**Stop solicitation promptly and without prolonged delays to the concerned process.** Where other accountability mechanisms are slow or untrusted, a mechanism that is tasked with responding swiftly and impartially to cases of solicitation or extortion should satisfy business expectations for a 'quick fix'. For example, a swift response to extortion when it occurs in the context of obtaining customs clearance is critical for businesses.

**Demonstrate that a government is concerned about reducing bribery and a well-functioning business-related services sector.** A HLRM can play a role in creating an environment conducive to investment. Businesses may have greater confidence in investing in a country if they know that, when solicited to pay bribes, they will be able to take their grievances to a dedicated body for quick resolution. A HLRM can also help create a "level-playing field for commerce", as unscrupulous competitors who act unfairly will ultimately be held accountable.

**Mitigate or prevent adverse impacts on public projects and processes caused by corruption.** For example, in the context of procurement, a prompt response may prevent financial damages linked to early repair costs to maintain corrupt investments or adverse environmental impacts. In the context of tax inspections, a quick fix may prevent reputational damage to tax authorities that could be caused by lingering suspicions of impropriety.

**Improving investor climate and credit rating.** For a country considering a HLRM, the incentives for so doing include the likelihood of favourable responses by country credit rating agencies as well as international companies considering direct investments, and positive reputation repercussions.

**Provide valuable feedback to governments.** A HLRM can serve as an early warning system for wider problems; yield insights from individual complaints that spotlight changes that might be needed to the concerned agency's operations or management systems; or indicate possible systematic changes that may be required.

## Complaints Management Process

**Process steps.** A HLRM should have a robust process in place for addressing complaints. Although the detail of actual processes for complaints resolution may vary from one country to another according to national context, it should include in its simplest form four steps: (i) receiving

and screening the complaint; (ii) assessing the complaint; (iii) selecting a resolution approach; and (iv) settling the issue.

**Admissibility criteria: Who can raise complaints?** A HLRM may consider complaints from directly affected companies only or from third parties such as business associations, NGOs or individuals who may be aware of improprieties. In all cases, the HLRM should be available to all businesses, domestic and foreign.

**Screening.** Clear eligibility criteria should be established. Eligible complaints may include those where the complaint pertains to the project; the complainant has standing to file; the complaint falls within the scope of issues the HLRM has authority to address. To be most effective, the Mechanism should be open to a broad range of concerns, as solicitation encompasses many situations. For example, if a company questions whether the fees it is asked to pay to secure a sanitation clearance upon application for business permit are legitimate, the HLRM should address these concerns given that they may be disguised bribe payments.

**Reviewing, investigating and settling complaints.** For a HLRM to work, complaints should be promptly handled. For example, in the case of bidding, the timing of the Mechanism should allow resolution prior to the awarding of the tender. Process should also focus on dialogue and engagement. Specifically, in order to inform the process, HLRM staff responsible for handling complaints should involve managers from the departments/agencies whose activities have resulted in claims. Such inclusion may serve as a basis for the concerned agency's prompt response, or for a set of recommendations or a decision – which can be binding or non-binding- issued by HLRM senior managers. Recommendations or non-binding decisions can be both powerful and compelling, especially if the Mechanism benefits from top political commitment and relies on a transparent process that allows for the possibility of social pressure for voluntary compliance with its outcome.

**Specific case where there are reasonable grounds to suspect a violation of the law.** In such situations, deferral to competent enforcement authorities is likely to be necessary. Wherever possible, the entity whose employees have allegedly committed unlawful acts should be expected to take temporary corrective actions (e.g. suspending the effect of the decision taken by its staff) until a thorough assessment is received from the competent authorities. If it appears that suspicion persists, they will decide what subsequent action should be taken. Wherever possible, the identity of the complainants –if known- should be made anonymous in the report filed with the authorities, provided that they will be able to contact them without delay. In any event, complainants should have an opportunity to make an informed decision about how they wish to proceed.

**Remedies: What kind of response companies can expect from the Mechanism?** One of the potential advantages of a HLRM is its flexibility. As such, it should provide a set of possible remedies appropriate for different types of complaints. Remedies may include altering or halting harmful activities through, for example, moving the public official whose behaviour is suspicious, delaying the awarding of a public contract, amending the requirements for customs clearance, or revising the concerned agency's policy.

## Governance

**Finding a home for the Mechanism.** Where the HLRM resides and who is responsible within the Mechanism will send a strong signal to all stakeholders about the government's commitment to combat solicitation. While the HLRM's home should be in a prominent place in the hierarchy of public authorities and high-level personnel should be assigned to manage it, its activities should be mainstreamed in the work of government. If responsibility for resolution of complaints is assigned to a specific ministry, this entity may not have the authority to secure effective resolutions from other government agencies subject to its control. Similarly, the effectiveness of the HLRM is likely to be compromised if it is totally disconnected or only loosely linked to government,

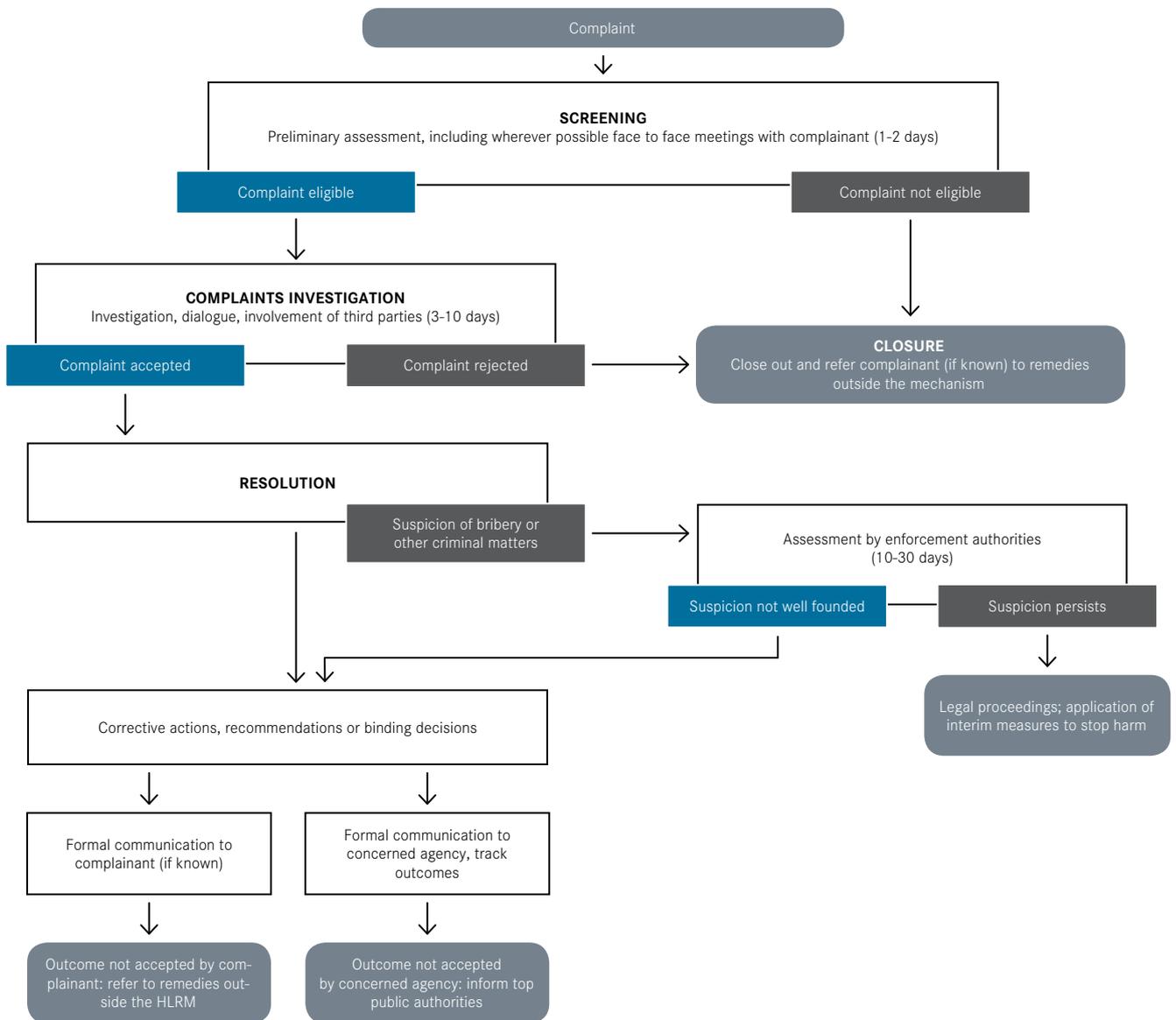


Figure 1. Basic High Level Reporting Mechanism Process (with suggested timelines)

which is often the source of a complaint and therefore needed to be engaged in resolution. In that case, the HLRM should have a clear legal basis for obtaining the necessary inputs and cooperation from government agencies.

**Involving third parties.** Involving third parties – such as academics, NGOs, experts– in the Mechanism may help increase the level of trust from businesses as well as overcome certain limitations of the HLRM such as possible conflict of interest and biases, provided that they themselves are perceived to be unbiased and impartial relative to both the companies and the concerned public agencies. Their role may include reviewing complaints; acting as advisors for the resolution of conflicts; helping safeguard the fairness of the system through oversight functions; and advising on long-term systemic reform.

**Funding.** The functions of a HLRM are intrinsic to the actions that a state should undertake to prevent corruption and for this reason it should ideally be financed publicly. But given current pressures on public finances in many countries of the world, it should not be excluded that its costs be borne partly or fully by the business community from which the HLRM's work arises or are covered on the basis of a mixed financing model (public-private or/and donor funding). Each strategy nevertheless presents risks. Where companies are to be major funders, this may raise potential conflicts of interest. On the other hand, too great a share of donor financing can erode the Mechanism's legitimacy. Donor policies also change and may decide to disengage, especially if they are not content with the performance of the Mechanism.

## Accessibility, Transparency and Accountability

**Publicizing the Mechanism.** Companies can only access the HLRM if they know about it, and where to find it. As part of this requirement the HLRM should have a website, which would also allow the complainant to submit a complaint online. Any HLRM should also have a published procedure that is clear and simple while providing details about how

the Mechanism works, who can access it and how. It is also crucial to make sure that appropriate public agencies are aware of process and know when and how companies can refer to it. It is also important that companies raise awareness about the Mechanism among their employees.

**Reporting back to stakeholders.** Information about the outcomes of the Mechanism should be provided as this knowledge can contribute towards a greater understanding by all parties. The Mechanism should thus provide regular feedback to stakeholders to clarify expectations about what it does and does not do; to encourage companies and individuals to use the Mechanism; to report on results; and to gather observations to improve it. Information reported back may include the nature and volume of complaints and the responses thereto, and the way the complaints have influenced public policies, procedures, operations, and the Mechanism itself.

**Monitoring, evaluating and improving the Mechanism.** Accountability is an essential condition for continuous trust in the HLRM. Regular monitoring is necessary to safeguard its credibility and sustainability. Credibility of the process and trust between companies and exposed public authorities will be enhanced if an oversight group with advisory authority, composed of business, civil society, and government representatives is set up to monitor and evaluate the performance of the Mechanism. Clear evaluation criteria may include: general awareness of the Mechanism; whether it is used and by whom; the types of issues addressed; its ability to resolve complaints early and constructively; and outcomes (impacts, benefits).

**Using the Mechanism as a vehicle of change.** HLRMs should not just be accountability mechanisms but also vehicles of change. In addition to protecting businesses from abuse, a HLRM is an opportunity for identifying systematic regulatory risks and promoting policy changes and improved public service delivery. The Mechanism should thus have power to advise the government on the systematic causes of bribe solicitation or to submit proposals on how to improve administrative processes.

# Annex 2: Useful links and further reading

Aiolfi, G., Bonucci, N. (2015). Designing a High Level Reporting Mechanism for Business – A Guidance Note for Governments. Available at: [https://www.baselgovernance.org/sites/collective.localhost/files/publications/basel\\_oecd\\_guidance\\_note\\_for\\_governments.pdf](https://www.baselgovernance.org/sites/collective.localhost/files/publications/basel_oecd_guidance_note_for_governments.pdf)

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IMF Country Report n. 17/83, Ukraine, April 2017. Available at <http://www.imf.org/en/Publications/CR/Issues/2017/04/04/Ukraine-2016-Article-IV-Consultation-and-third-review-under-the-Extended-Arrangement-44798>

Business Ombudsman Council, Ukraine: <http://www.boi.org.ua>

Argentina's HLRM: <http://ppp.vialidad.gob.ar/anticorruption/>

HLRM information on the OECD website: <http://www.oecd.org/corruption/hlrm.htm>

HLRM information on the Basel Institute Collective Action website: <https://www.collective-action.com/initiatives/hlrm>

### **Basel Institute on Governance**

The Basel Institute on Governance is an independent non-profit competence centre specialised in corruption prevention, public and global governance, corporate governance and compliance, anti-money laundering, criminal law enforcement and the recovery of stolen assets.

The Institute's multidisciplinary and international team works around the world with public and private organisations towards its mission of tangibly improving the quality of governance globally in line with relevant international standards and good practices.

### **International Centre for Collective Action**

Building on more than 20 years of experience in anti-corruption and anti-money laundering standard setting, and on more than a decade of practical work in compliance and Collective Action, the Basel Institute has established the International Center for Collective Action (ICCA). The purpose of the ICCA is to assist companies and other concerned stakeholders in enhancing their ability to prevent corruption, with a particular focus on bribery solicitation.

Building on its network of intellectual partners, which include business organizations, international standard setters and influential non-state actors as members, the ICCA serves as a knowledge hub for information about worldwide Collective Action initiatives and research. Regular fora for policy dialogue as well as a web-based information platform enables members and interested parties to exchange information. The ICCA also acts as center of competence by conducting interdisciplinary and applied research on the functioning and impact of Collective Action. Finally, the ICCA's representatives and partners make their experience available for launching new and advancing existing Collective Action initiatives around the world.

### **Working papers**

In this working paper series the Basel Institute on Governance publishes reports by staff members and invited international experts, covering critical issues of governance theory and practice. For a list of publications, please visit [www.baselgovernance.org](http://www.baselgovernance.org).

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