

# Corruption Proofing

Safeguarding the Development of Legal texts free of  
Corruption Risks

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Baghdad



Legal?

Money

What is

CORRUPTION

???

Power

?





Abuse of entrusted  
power for private gain

*How can  
we stop  
it?*



**STOP  
CORRUPTION**



**STOP  
CORRUPTION**

**Can we stop it  
even before?**

**(before the hands)**



In the beginning was the *Word*,  
and the Word was with *God*, and  
the *Word* was *God*.

JOHN 1:1



# How to prevent abuse of entrusted powers?

**01**

## **WHAT IS POWER?**

competences, functions, duties, mandate, are entitlements of authority.

**02**

## **HOW IS IT ENTRUSTED?**

the source of entrusted power is the law.

**03**

## **DO LAWS CORRUPT?**

Legislation is decisive for how corruption will manifest in the future.

**04**

## **FIXING LEGAL PROVISIONS?**

Some legal provisions will make it easier to abuse them for private gain, others will render it nearly impossible



# Laws likely to generate corruption

## **AMBIGUITY**

Lack of clear legal boundaries to entrusted powers makes it difficult/impossible to determine that these have been crossed.

## **WIDE DISCRETIONS**

The wider the discretions, the higher the probability of corruption

## **TAILOR-MADE LAWS**

Legalize an abuse for intended beneficiary.





The corrupt are more inclined to take risks if the powers to be abused for private gain are wide, ambiguous or non-exhaustive.

Changing the paradigm acts as a deterrent, lowering the chances of corruption.

Corruption proofing of  
legislation implies screening to  
improve legal provisions in such  
a way as to considerably  
decrease the likelihood of  
individuals devoting to  
corruption.

# Goals of corruption proofing



## **PREVENT CORRUPTION**

by eliminating the dangerous provisions from draft laws (corruption risk factors)



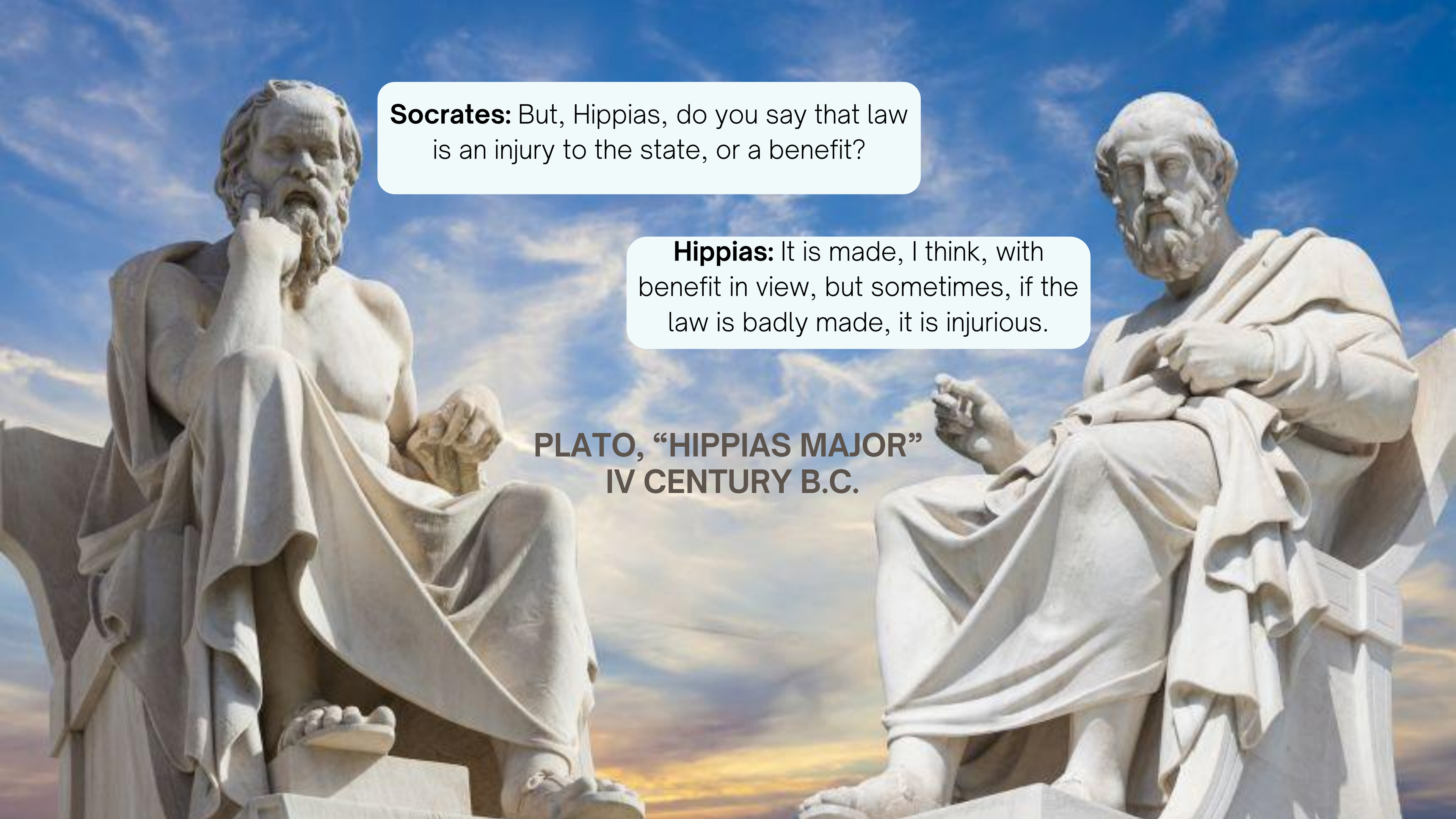
## **AWARENESS**

by making the proponents and the public aware of the corruption risks that will appear as a result of the dangerous provisions identified in the draft



## **PUBLIC INTEREST**

Providing additional safeguards to ensure that the legislative process advances the interests of the citizens and the public interest

The image features two marble statues of men, likely Socrates and Hippias, from Plato's dialogue 'Hippias Major'. They are seated on a stone ledge against a background of a blue sky with wispy clouds. The statue on the left is Socrates, depicted with a full beard and hair, wearing a simple, draped garment. He is shown in a contemplative pose, with his right hand raised to his chin. The statue on the right is Hippias, also with a beard and hair, wearing a more ornate, draped garment. He is shown in a more active pose, with his hands resting on his lap. The overall scene is brightly lit, suggesting a sunny day.

**Socrates:** But, Hippias, do you say that law is an injury to the state, or a benefit?

**Hippias:** It is made, I think, with benefit in view, but sometimes, if the law is badly made, it is injurious.

**PLATO, "HIPPIAS MAJOR"  
IV CENTURY B.C.**



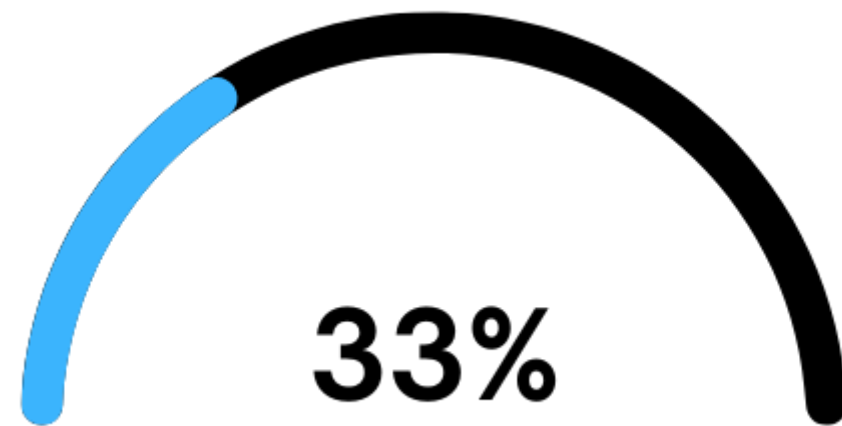
# Voltaire

*(Dictionnaire philosophique, 1764)*

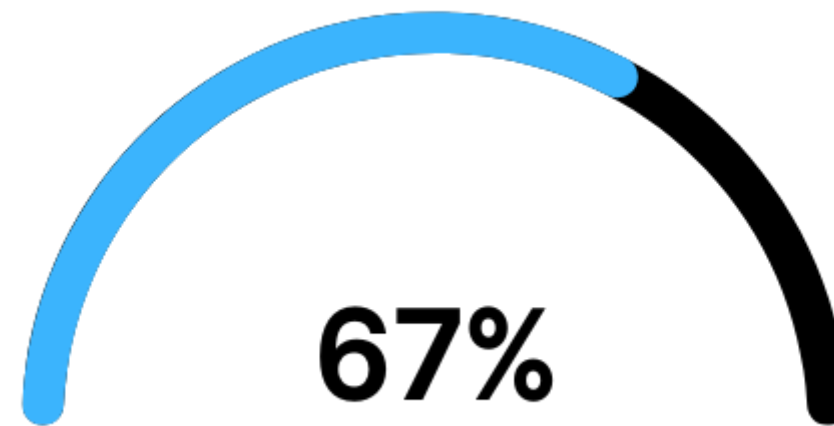
Que toute loi soit claire, uniforme et précise: l'interpréter, c'est presque toujours la corrompre.”

“Let all laws be clear, uniform and precise: to interpret laws is almost always to corrupt them.”

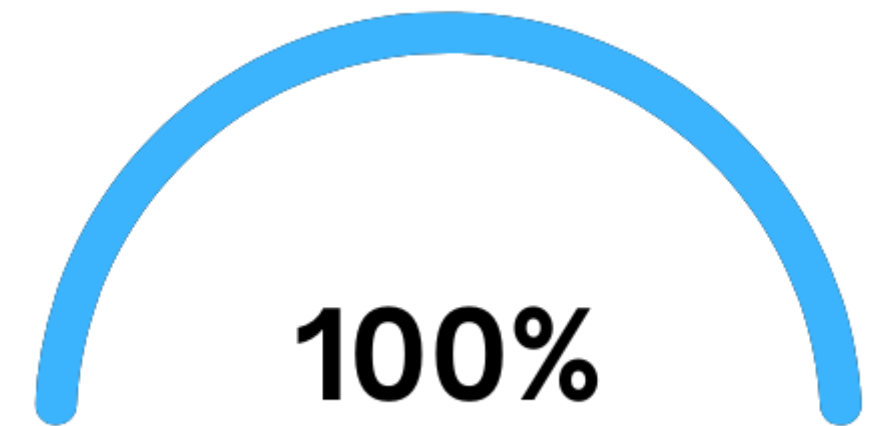
# When discretion of public official to interpret laws is dangerous?



When he can choose an interpretation of the legal provisions which he prefers



When he can choose a preferred interpretation over the expected by the citizen



When such interpretations can be used for private gain

# Are the opportunities for corruption included intentionally in the laws?



## UNINTENTIONAL

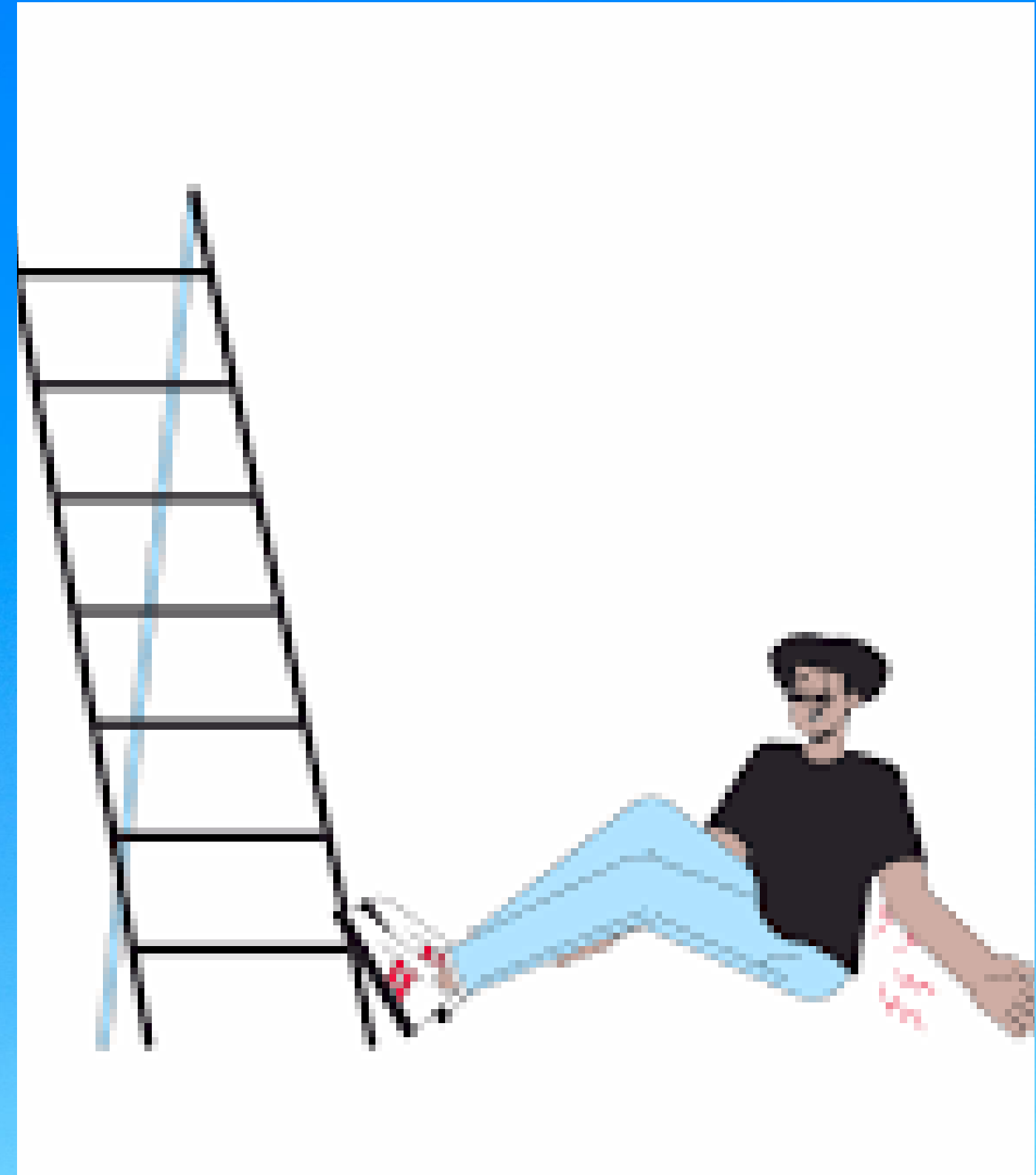
most of the times, as a result of poor drafting skills of



## INTENTIONAL

sometimes, but these cases generate major cases of corruption (tailor-made laws)

Unintentional





# Example 1 - law on getting a passport

01

## DOCUMENTS TO SUBMIT

Application

Picture 3x4 cm

Applicant's birth certificate

Payment confirmation

**Any other document required**

02

## DOCUMENTS TO SUBMIT

Application

Picture 3x4 cm

Applicant's birth certificate

Payment confirmation

Confirmation of residence

# Example 2 - law on getting a passport

01

**AFTER SUBMITTING THE DOCUMENTS...**

the **passport** shall be issued **within ten working days**

02

**AFTER SUBMITTING THE DOCUMENTS...**

the **decision on issuing the passport** shall be taken **within a period of 3 months**

# Example 3 - law on traffic rules

The background of the slide features a blurred illustration of a blue car on the left and two stylized human figures on the right. One figure is wearing a red shirt and the other a blue shirt, both appearing to be in a conversation or looking at something together. The overall style is clean and modern with a light, airy feel.

01

## FOR DRUNK DRIVING...

the police **may** prohibit the perpetrator from further driving and impose a fine.

02

## FOR DRUNK DRIVING...

he police **must** prohibit the perpetrator from further driving and impose a fine.

# Example 4 - Criminal Code

01

## FOR STATE FUNDS EMBEZZELMENT

the court shall apply 10-15 years of jail time and confiscation of assets.

02

## FOR STATE FUNDS EMBEZZELMENT

the court shall apply a **fine of 100-150 euro or 10-15 years of jail time and confiscation.**

# Intentional



# **Turkish Social and General Health Insurance Law No. 5510, in force since May 2019**

The law authorizes the MoH to categorize different types of health-care providers and creates a new category of hospitals, which are defined as “advanced level hospitals”.

The requirements to be considered an advanced level hospital are to have a 600-bed capacity, 60,000 sq.m. of indoor facilities, 240 doctors and 480 nurses.

This type of hospital is supposed to receive better benefits from the MoH.

Interestingly, only one hospital meets the requirements and it is formerly owned by the Health Minister Fahrettin Koca.

# Albanian Gambling law amendment of 2015

In 2015, a law on gambling aimed to reduce the damage caused by the gambling industry among the youth and poor was proposed.

Initially, the draft included provisions to charge the gambling industry a 25% tax, limit the number of stations to a maximum of 500 per gambling company, and locate stations at least 200 m from religious and education institutions.

However, 24 hours before the plenary session, amendments were submitted that, instead of limiting, expanded gambling: the amendments decreased the tax from 25 to 15 per cent, doubled the limit on gambling stations from 500 to 1000, and decreased the minimum distance from 200 to 100 m.

In the two years after the law was passed, the gambling industry increased its revenue by 68%. The main beneficiaries were five gambling companies with a 80% quota of the industry.

# Albanian Millot-Baldren highway construction

In October 2018 the Ministry of Infrastructure announced a 13-year concession for the construction of the 17.2 km road.

Law No. 52 was passed in July 2019 for this purpose.

The company charged €256 million (€15 million per km), more than twice the amount that the government had envisaged for the construction of the road in its Sectorial Transport Strategy 2016-2020. Still, the government allocated an extra €44 million to the project in its mid-term budget plan, increasing the total cost to nearly €300 million.

The State Supreme Audit Institution of Albania (ALSAI) revealed an artificial increase in the costs of the project created by qualifying the project as a “highway” instead of an “interurban road” with a consequent increase in the price from €61.5 million to €140 million in the feasibility study.



# Romanian Criminal Code



In 2015 the Ministry of Justice initiated an amendment to the Criminal Code regulation of the abuse of office, while the Prime-Minister Victor Ponta was charged for corruption on several counts by the National Anti-corruption Directorate.

The amendment aimed at increasing the threshold of damages above the level of damages that the Prime-Minister has inflicted, thus absolving him of criminal liability.

# Moldovan Law amending the court fees and the FIU law

Between 2010-2014 more than 20 billion USD were laundered through the Moldovan banking system from the Russian Federation.

The Russian Laundromat involved Moldovan citizens and Russian banks, having to settle loans in courts worth hundreds of millions and billions sometimes.

Before the Laundromat began, the law on court fees was changed, in order to limit the court fee amounts: 3% of the value, but not more than 20.000 lei.

Right before the scheme was operated, the FIU Law was changed, by which filing an appeal against the FIU freezing order on the bank accounts in case of suspicious transactions unfroze the funds before the case was heard and decided by the court.

The scheme was soon uncovered, but in the meantime more than 20 billion USD were laundered through the banking system at a very limited cost in courts.

# Tailor-made laws



**CREATE OPPORTUNITIES FOR SYSTEMIC CORRUPTION AND ENABLES MAJOR CORRUPTION SCHEMES**



**LEGALIZE THE PRIVATISATION OF PUBLIC INSTITUTIONS AND RESOURCES**



**UNDERMINE THE FIGHT AGAINST CORRUPTION BECAUSE THE EFFORT WILL BE PERCEIVED AS DISOBEYING THE LAW**



**LEAD TO STATE CAPTURE**



Dr. Joel S. Hellman and Dr. Daniel Kaufmann  
experts in the field of state capture

“While most types of corruption are directed toward changing how existing laws, rules, or regulations are implemented with respect to the bribe payer, **state capture refers to corrupt efforts to influence how those laws, rules and regulations are formed.**”

“State capture is an **organized group aimed at influencing decision-making and implementation in a way that favours a particular interest** to the detriment of the general interest”.

**What does it  
take to  
implement  
corruption  
proofing?**



Political and institutional

Enabling law and/or strategy

Corruption Proofing Methodology

Allocation of dedicated resources to  
conduct corruption proofing

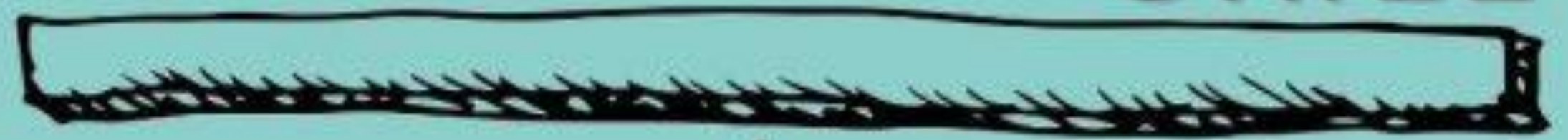
To apply the Corruption Proofing  
Methodology

Understanding corruption crimes  
investigation and corruption  
prevention

Understanding legal drafting rules

**WILL**

**SKILL**



## WHAT?

What legal texts will be screened, drafts or enacted as well, laws, or also by-laws?

## WHEN?

At which moment during the legislative process will the draft be sent for corruption proofing?

01



02

03

04

## WHO?

Which institution will be tasked, designate dedicated staff with legal background

## HOW?

Methodology, defining corruption risks and risk factors to be identified in laws, regulate the interaction with the proponent and the adopting authority (Parliament, Government, ministries)

**SOUTH KOREA  
(ACA)**

All enabled laws  
mandatory

**KAZAKHSTAN  
(ACA, academia  
and NGO)**

all draft laws,  
by-laws and  
local acts.

**LITHUANIA, SERBIA  
(ACA)** selected and  
enabled draft laws  
and by-laws

**MOROCCO  
TUNISIA**

**MOLDOVA  
(ACA, NGO)**

All draft laws and  
draft by-laws -  
mandatory

Local and ministerial  
acts - upon request

**ALBANIA,  
UKRAINE  
(PARLIAMENT)**

All draft laws tabled  
to the Parliament -  
mandatory



T H A N K

Y O