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In Memoriam

The present issue of *Forum* is devoted to the memory of the late Bola Ige, Minister of Justice and Attorney-General of Nigeria, who, shortly before his death, submitted the description of efforts to fight corruption in Nigeria that appears in part two of this issue.

Note from the Editorial Board

Forum on Crime and Society is a United Nations sales publication issued by the Centre for International Crime Prevention of the Office on Drugs and Crime, based in Vienna. It is published twice yearly in the six official languages of the United Nations: Arabic, Chinese, English, French, Russian and Spanish.[1]

The first issue of *Forum* (vol. 1, No. 1, February 2001) was based on the outcome of the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Vienna from 10 to 17 April 2000. The second issue (vol. 1, No. 2, December 2001) was devoted to the theme of organized crime. The theme of the present issue is corruption.

There is a general consensus that corruption needs to be eliminated not only because it is an evil in itself, but also because it jeopardizes social, economic and political advancement, encourages organized crime and disrupts legitimate structures, functions and activities. In the 1990s, issues related to corruption were repeatedly raised within the United Nations and other forums. On the recommendation of the Commission on Crime Prevention and Criminal Justice, the General Assembly adopted resolution 55/61 of 4 December 2000 on an effective international legal instrument against corruption, in which it decided to establish an ad hoc committee for the negotiation of a convention against corruption. The ad hoc committee met in Vienna from 21 January to 1 February 2002 and from 17 to 28 June 2002.

In 1999, the Centre for International Crime Prevention launched its Global Programme against Corruption. The Programme helps Governments to counter corruption and focuses in particular on the criminal justice system, assessing corruption and fostering integrity, efficiency and effectiveness with special reference to the judiciary, as well as facilitating an integrated, evidence-based approach in partnership with key stakeholders, including the public and victims. Within the framework of the Programme, materials of a normative and operational nature, such as an anti-corruption policy manual and an anti-corruption tool kit, are being developed.[2]

In the present issue of *Forum*, Susan Rose-Ackerman, Professor of Law and Political Science at Yale University, addresses the role of criminal law in tackling corruption. Nihal Jayawickrama, former Attorney-General of Sri Lanka, Jeremy Pope, Executive Director of Transparency International, and Oliver Stolpe of the Centre for International Crime Prevention emphasize the need for special evidentiary standards in corruption cases, such

[1] *Forum* is also available in English only at the following web site: <http://www.odccp.org/crime_cicp_publications.html> (accessed 8 October 2002).

[2] The text of the draft United Nations Manual on Anti-Corruption Policy can be found at <http://www.odccp.org/pdf/crime/gpacpublications/manual.pdf> and that of the Anti-Corruption Tool Kit at <http://www.undcp.org/corruption_toolkit.html> (accessed 8 October 2002).

as the reversal of the burden of proof. Michael Johnston, Professor of Political Science at Colgate University, proposes indicators of corruption which go beyond the perception of business leaders or the public at large of the extent of corruption in their countries. Brian Cooksey of Transparency International discusses the role of aid agencies. Petter Langseth of the Centre for International Crime Prevention describes how the former Chief Justice of Nigeria, with the help of the Centre, strengthened judicial integrity via the integrated, evidence-based approach advocated in the Global Programme against Corruption. Hubert Williams, President of the Police Foundation of the United States of America, examines the factors accounting for police corruption. Dan Saxon, Prosecutor at the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991, argues that some forms of corruption may constitute the crime against humanity known as "persecution".

In the second section of the present issue of *Forum*, entitled "Notes and action", case histories or accounts of notable anti-corruption efforts are presented. The late Bola Ige, Minister of Justice and Attorney-General of Nigeria, reports on grand corruption; Jotham Tumwesigye, Inspector General of Uganda, describes how Uganda developed and implemented its integrity strategy; Alan Lai, Commissioner of the Independent Commission against Corruption of the Hong Kong Special Administrative Region of China, describes the essential process of winning public trust in the fight against corruption; Héctor Charry Samper, Ambassador of Colombia to the United Nations (Vienna), describes the recent steps taken towards transparency in his country. In addition, Dimitri Vlassis of the Centre for International Crime Prevention presents an overview of the negotiations on the draft United Nations convention against corruption.

The Editorial Board would like to express its appreciation to Cecilia Riccetti, a United Nations Volunteer working in the Centre for International Crime Prevention, for her help in the preparation of the present issue of *Forum*.

Guidelines for the submission of articles

The Editorial Board invites scholars and experts from around the world to contribute to *Forum* articles on criminological and socio-legal issues. Articles submitted for publication in *Forum* must be original, that is, they should not have been published elsewhere. The length of manuscripts to be considered for publication as articles in the first section of *Forum* should not exceed 6,000 words.

Shorter papers and commentaries to appear in the second section of *Forum*, entitled "Notes and action", should not exceed 2,500 words in length.

Manuscripts should be submitted in hard copy or, if possible, in electronic format. The curriculum vitae of the author and an abstract should accompany each manuscript.

Manuscripts to be considered for publication in *Forum* should follow the Harvard system of referencing, whereby the author and year of publication of a work appear in the text and full details of the work are provided in a list of references at the end of the text.

All manuscripts, reviews and correspondence should be addressed to Antoinette Al-Mulla, the Managing Editor of *Forum*, either by post (Centre for International Crime Prevention, United Nations, P. O. Box 500, A-1400 Vienna, Austria), by e-mail (Antoinette.Al-Mulla@unvienna.org) or by fax ((431) 26060-5298).

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Part one

Corruption and the criminal law

By Susan Rose-Ackerman[1]

Abstract

The criminal law can play a back-up role in the fight against corruption. The present article discusses five aspects of the criminal law on corruption. First, corruption may be reduced by legalizing some formerly illegal activities and criminalizing others. Second, penalties need to be set to achieve effective deterrence. Third, law enforcement authorities need tools such as plea-bargaining to encourage bribe payers and recipients to cooperate with authorities to uncover corruption. Fourth, corporations and other organizations need to be held responsible for the corrupt actions of their employees. Fifth, because corruption is often a side effect of organized crime activity, authorities need to design strategies to deal with this overlap. In general, the goals of law enforcement should be to determine those corrupt systems that are doing the most damage and to organize the deterrence effort to make corruption costly and to give participants an incentive to report corrupt deals.

Introduction

Corruption cannot be fought solely through criminal law. Too often, Governments announce a crackdown on corruption and a spate of high-profile prosecutions take place, only for the problem to re-emerge soon afterwards as a new group of people takes advantage of the opportunities that remain. A serious anti-corruption effort requires the State to re-examine the relationship between government, citizens and businesses. Governments may need to redesign public programmes, overhaul the public administration and the operation of the political system and become more open to outside scrutiny and input from citizens. Nevertheless, the criminal law can play a role as a backstop lying behind the needed structural changes. Unfortunately, it does not always play that role, even in countries where prosecutions for corruption are common. Sometimes, the

[1]Henry R. Luce Professor of Law and Political Science, Yale University, and author of *Corruption and Government: Causes, Consequences, and Reform* (1999). Portions of this article are derived from that book. Aleksandra Sznajder provided help with the material on French and Polish law.

problem is the biased use of the criminal law to target members of the political opposition; in the extreme, such prosecutions deter opposition to the regime in power but have little impact on corruption. Sometimes, the problem is the weakness or venality of the judicial system. Then, even cases based on strong evidence may fail in court and this possibility deters prosecutors from bringing cases in the first place.

The present article considers the back-up role of the criminal law as an aid to deterrence. There are several aspects to this problem: first, the legalization of certain illegal activities can remove incentives for corruption; conversely, some formerly legal activities may need to be criminalized to deter activities that have much the same effect as outright bribes. Second, penalties should be set to achieve optimal deterrence. Third, law enforcement authorities should have the tools to encourage bribe payers and bribe recipients to cooperate with authorities to uncover corrupt transactions. Fourth, as bribes are frequently paid by people acting in the interest of their employers, corporations and other organizations should be held accountable under the criminal or civil law. This is an issue of particular salience, given the new Organisation for Economic Cooperation and Development (OECD) treaty that requires States to punish overseas bribery by corporations engaged in international business. Finally, corruption is often a side effect of organized crime activity. Authorities need to design strategies to deal with the intersection between organized crime and corruption.

Legalization and criminalization

Countries seeking to deter corruption and fraud may need to decriminalize some activities and criminalize others. When economic activities such as the sale of drugs, gambling or prostitution are criminalized, incentives for corruption are created. Those who engage in the illegal activity may seek to corrupt law enforcement officials in order to continue operating. Thus, one way to reduce corruption is to legalize formerly illegal activities. Policy makers need to ask if the costs of illegality outweigh the benefits. For example, after a short experiment with Prohibition, the United States of America repealed the eighteenth amendment to the Constitution outlawing the manufacture and sale of "intoxicating liquors". Its time in force, between 1919 and 1933, was a period of widespread illegal production and sale of alcohol and endemic corruption of law enforcement officers. The amendment's repeal was supported by many in the law enforcement community. The worldwide debate over legalizing drugs turns on the feasibility of controlling the industry through the criminal law, when law enforcement authorities are vulnerable to corruption. Gambling, formerly outlawed in many American jurisdictions, was also an important source of corrupt receipts for the police. The response in many jurisdictions has been to turn gambling into a legal business, albeit under heavy state supervision and even, at times, state ownership. Thus, countries may need to examine where the line between legal and illegal activity has been drawn and ask if

there are some areas where criminalization is providing few social benefits and encouraging corruption and illegal business.

On the other side of the ledger, new criminal and civil offences may need to be created. Many new democracies have not come to terms with the problem of conflicts of interest among executive branch officials and members of the legislature. Most developed countries use a mixture of criminal sanctions, administrative penalties and ethical codes to regulate civil servants' and politicians' involvement in decisions in which they have a financial interest. Emerging democracies can learn from examining this experience.

In the United States, a mixture of ethical codes and statutory requirements constrains public officials (Gilman 1995, p. 65). Officials are not permitted to "use public office for private gain" and are not to hold financial interests that conflict with their duties, use inside information for personal profit or accept gifts. Both the payment and receipt of bribes are criminal offences. The receipt of a salary from sources outside the Government is against the law, as are payments to officials for representing a private party in a "particular matter" in which the United States has an interest. The law applies to both public officials and those who pay them (Chakrabarti, Dausses and Olson 1997, pp. 597-605).[2] Officials must avoid the appearance of violating the law, even if their conduct technically complies with it.

By way of comparison, French and Canadian conflict-of-interest restrictions have similar goals but use different methods. French law focuses more on administrative than criminal remedies, but shares the fundamental goal of avoiding "an unwholesome alliance between personal financial interest and the exercise of the power of the state" (Rohr 1991, p. 284). Nevertheless, French restrictions seem, in practice, less stringent. Financial disclosure of assets is not required as a routine matter, and post-employment restrictions are poorly enforced (Rohr, pp. 284-286). Canadian (and British) rules are also less restrictive. Parliamentary government puts the prime minister in charge of the legislative agenda. This means that, unlike the United States, conflict-of-interest laws are unlikely to impose more stringent controls on members of the executive branch than on members of parliament. Civil servants are regulated by administrative rules, not statutes (Stark 1992, p. 429).

In practice, the most difficult enforcement problems concern job-seeking. Although, in the United States, government outright quid pro quos seem fairly well controlled by the code of conduct and the legal sanctions behind it, officials are often hired after they leave government service by firms that have business with their previous government employer. The code of conduct states that "employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official government duties and responsibilities". Subject to several conditions, former officials cannot represent others before their former employer within two years of termination. The ban is

[2] 18 USC 201, 203, 207, 208.

not absolute, however, as it only applies to issues on which the person worked within a year of leaving government (Chakrabarti, Dausses and Olson 1997, pp. 608-612).[3]

The United States mix of codes of conduct and criminal, administrative and civil sanctions is complex and not always easy to understand or interpret. Some critics argue that United States conflict-of-interest laws are intrusive and counterproductive (Anechiarico and Jacobs 1996; Roberts and Doss 1992). According to these critics, the rules introduce too much red tape, stifle creativity and discourage qualified people from joining the public service. Even if the United States model is too complex to be readily exported, however, it can still provide guidelines for countries beginning to develop norms of professional bureaucratic behaviour. The harshest critics of the United States system do not argue that procurement officers ought to be allowed to own shares in their contractors or accept salaries or large gifts from firms with which they do business. Yet in many developing countries such practices have only recently been recognized as troublesome. To prevent government service from becoming a cynical route to easy wealth, all countries need a basic conflict-of-interest programme that stresses ethical conduct and is backed up by legal sanctions, some of which will involve criminal penalties. But simple and basic rules of behaviour are the best place to start, especially if one of the goals is to avoid turning the oversight process itself into a locus of corruption.

Deterring corruption: penalties

All countries draw the line somewhere between illegal bribery and acceptable "gifts of good will". They criminalize certain businesses such as the drug trade and legalize others. Countries differ in where the dividing line is set, and in this section that judgement is taken as given and an effective deterrence strategy is sought. The sanctioning strategies proposed in the present article are quite different from the conventional penalties, even in developed countries. They focus both on improving the deterrent effect of arrest and punishment and on rewarding those who come forward with documentation on corrupt deeds.

The optimal amount of corruption is not zero, even if no value is given to the benefits received by bribers. Once the costs of prevention are taken into account, the level of deterrence expenditures should be set where the marginal benefits equal the marginal costs (Anechiarico and Jacobs 1996; Becker and Stigler 1974; Rose-Ackerman 1978, pp. 109-119). The deterrence of criminal behaviour depends on the probability of detection and punishment and on the penalties imposed, both those imposed by the legal system and more subtle costs such as loss of reputation or shame (Becker 1968). Law enforcement authorities can vary either

[3] 18 USC 207 (a)-(d).

or both of these variables, but strong empirical evidence is lacking on their relative importance.[4]

Successful detection of corruption depends upon insiders to report wrongdoing. Often, this requires officials to promise leniency to one of the participants. This creates an important paradox for law enforcement efforts. High expected punishments ought to deter corruption, but a high probability of detection can only be accomplished if some are promised low penalties. This section begins with a discussion of deterrence based on expected punishment. In the next section, strategies are considered that take account of the interaction between punishment and the probability of detection.

In some countries, bribe payers are treated more leniently than recipients. Some countries do not even criminalize the payment of bribes.[5] In others, the reverse is true: the criminal law distinguishes between "active" and "passive" corruption. The briber is viewed as the "active" party and the public official as "passive" (Vermeulen 1997). These distinctions do not capture the rich variety of cases. Often, the public official can be described as the active party who extorts a pay-off (Mény 1996, p. 311). In practice, the distinction between active and passive corruption and between extortion and bribery means little because both parties must agree before corruption can occur.

Bribery can be more usefully distinguished on the basis of its social harm (Shleifer and Vishny 1993).[6] Considering whether the briber is entitled to the benefit received and whether or not scarcity exists produces three categories: an illegal benefit, a legal but scarce benefit and a legal benefit that is not scarce if allocated honestly. If the benefit provided is illegal, the social harm of corruption is the distortion introduced by corrupt pay-offs. If the benefit is legal but scarce, the corrupt official gives preference to bribers over other potential beneficiaries. The social harm is the net cost of allocating by willingness-to-bribe instead of by the stated criteria of the corrupted programme. Finally, the benefit may be legal and appear scarce only because of corrupt public officials. The social cost is then the distortion created by the officials' efforts to generate pay-offs. In deciding how to allocate law enforcement resources, the degree of social harm should be the most important variable. Holding constant the cost of enforcement, the highest priority should be given to the allocation of illegal benefits. In the abstract, it is difficult to rank corrupt transac-

[4]One study using United States data from the period 1970-1984 showed that both a greater probability of conviction and longer prison terms deter corruption (Goel and Rich 1989).

[5]In an interview in Taiwan Province of China in 1995, the Justice Minister Ma Ying Jeou complained that Taiwanese law did not make it a crime for a citizen to offer a bribe. He claimed that the lack of such an offence "seems to encourage businessmen to give out all kinds of gifts" and has been "a major obstacle to rooting out the *hung bao* culture [of giving money in red envelopes to officials]" (*Far Eastern Economic Review* 1995).

[6]Law and economics scholars distinguish between bribery and extortion, depending upon whether the payer receives "better than fair treatment" or must pay to be treated fairly (Ayres 1997, pp. 1234-1238; Lindgren 1988, p. 824); however, both are often combined in practice (Ayres 1997, pp. 1236-1237).

tions that affect the allocation of legal benefits. The social costs depend upon the damage done by using a willingness-to-pay criterion, on the one hand, versus the inefficiencies and inequities of officials' efforts to design in bottlenecks and scarcity, on the other.

Regarding punishment strategies, a ranking of the social harm of different kinds of corruption can help set enforcement priorities. However, the penalties actually levied on the convicted should be tied not to these social harms, but to the benefits received by the corrupt. Assuming that society does not give positive weight to corrupt gains, the goal is to reduce corruption as far as possible in spite of limited law enforcement resources. In order to deter bribery, at least one side of the corrupt transaction must face penalties that reflect its own gains. Because the chance of detection and conviction is far less than one, those convicted should sacrifice a multiple of these gains. From a pure deterrence point of view, either side of the corrupt deal can be the focus of law enforcement efforts. From the point of view of public acceptability, however, bribers who seek legal benefits are likely to arouse public sympathies, not blame. Whatever the focus, actors should face expected penalties tied to their own benefits from corruption.

The penalties imposed on officials should be tied to the size of the pay-offs they receive and the probability of detection. If penalties are not a function of the size of the bribe, an anti-corruption drive would quickly confront a paradox. A high fixed penalty will lower the incidence of corruption, but increase the size of bribes paid. If the penalty is high, officials must receive a high return in order to be willing to engage in bribery.[7] Thus, the expected penalty should increase by more than a dollar for every dollar increase in the size of the bribe (Rose-Ackerman 1978, pp. 109-135). This could be done either by tying the penalty levied upon conviction to the size of the bribe or by increasing the risk of detection as the size of the bribe increases. However, if the probability of detection is lower for small pay-offs, the penalty for each detected offence should reflect the low incidence of detection. This could mean that those convicted of petty bribery could face harsher penalties than those found to have taken larger bribes.

On the other side of the corrupt transaction, a fixed penalty levied on bribers will lower both the demand for corrupt services and the level of bribes. However, it will have no marginal impact once the briber passes the corruption threshold. To have a marginal effect, the penalties imposed

[7]For example, anecdotal reports by correspondents with Radio Free Europe/Radio Liberty claim that in Kiev, a drunk-driving ticket can be avoided with a bribe of US$ 50. In Prague, by comparison, a similar ticket will be forgiven for a $100 "donation". The claimed reason for the difference between Prague and Kiev is that the average monthly salary of a traffic policeman in Prague is five times higher than that of his counterpart in Kiev (Radio Free Europe/Radio Liberty 2001). Perhaps the chance of being caught is higher as well. Other sources find that the overall incidence of corruption is lower in the Czech Republic than in Ukraine. Thus, when accepting a bribe has a high expected cost, this will both deter corruption and raise the size of the bribes that are paid.

on bribe payers should be tied to their gains (their excess profits, for example), not to the size of the bribe.[8] Bribes represent a cost to those who pay them; thus penalties should not be tied to these costs unless they are a good proxy for the briber's benefits.

United States law does little to recognize this asymmetry between bribe payers and bribe recipients in its prescribed punishments. The criminal penalties are equivalent: both payers and recipients of bribes can be fined "not more than three times the monetary equivalent of the thing of value [that is, the bribe] or imprisoned for not more than fifteen years, or both".[9] This is appropriate for officials who receive bribes, except that multiplying by three may be a poor measure of the risk of detection and punishment. The actual probability of detection is likely to be well below one third. The law, however, does recognize the asymmetry of corrupt transactions by permitting the President to rescind any contract or other benefit if there has been a conviction under the statute governing bribery, graft and conflicts of interest. The United States can also recover, in addition to any penalties, "the amount expended or the thing transferred or delivered on its behalf, or the reasonable value thereof".[10] This right of recovery is designed to avoid losses to the Government. It is a weak deterrent to corrupt pay-offs because the recovery is not multiplied by a factor that reflects the probability of detection.

If expected penalties do not increase along with the benefits of corruption for bribers and the recipients of bribes, the Government may be caught in a trap where high corruption levels beget high corruption levels. A low-corruption equilibrium may also exist, but be unreachable in small steps from the status quo. A high-corruption equilibrium occurs when the net rewards of corruption increase as the incidence of corruption increases. This might occur, for example, if the probability of detection falls when corruption is widespread and if penalties levied upon conviction are not adjusted to take account of that fact. If most public officials take bribes, overwhelmed law enforcement officials may uncover only a small proportion of the corrupt transactions.

Any multiple-equilibrium case, however, can be converted into a single-equilibrium, low-corruption case with the appropriate choice of law enforcement strategy or a change in the information conditions. Strategies that tie expected penalties to marginal gains can remove a society from a high-corruption trap. Doing so, however, may require a large increase in law enforcement resources to tip the system to a low-corruption equilibrium.

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[8]Alternatively, if potentially corrupt firms are repeat players, they can be deterred by debarment procedures that prohibit corrupt firms from contracting with the Government for a period of years. To have a marginal effect, the debarment penalty should be tied to the seriousness of the corruption uncovered. For examples of debarment see *Nikkei Weekly* (19 February 1996) and Thacher (1995), who describes the practices used by the New York City School Construction Authority.

[9]18 USC 201 (a).

[10]18 USC 218.

The good news is that the sharp increase in enforcement resources need not be permanent. It must simply be sufficient to tip the system to a lower corruption level (Lui 1986, pp. 21-22). The idea is to change expectations. A concentrated clean-up campaign can change expectations about others' cooperation in the corrupt system. Once a new low-corruption equilibrium has been established, it can be maintained with reduced enforcement resources provided the honest are willing to report corrupt offers and law enforcement officials follow up on reports of malfeasance (Cadot 1987; Rose-Ackerman 1978, pp. 137-151).

Deterring corruption: rewards

Effective deterrence is impossible unless the police can obtain relevant evidence; this is a difficult task because often the participants are the only people who know of the corrupt deal. The probability of detection is a function of whether any of the participants has an incentive to report to the police. In this context, police promises of low penalties or even rewards are often essential.

Let us suppose, first, that the benefit is legal and would be freely available in an honest world to those who now pay bribes. Because the bribers receive benefits to which they are legally entitled, they are likely to believe that they are extortion victims who would be better off in an honest world. Such bribe payers are potential allies in an anti-corruption effort who may cooperate in efforts to eliminate pay-offs. They should not be punished heavily, because leniency will give them an incentive to report corrupt demands and will encourage the beneficiaries of public programmes to demand services that are free of pay-off demands. Public prosecutors need to have flexibility under the law to reduce charges and to seek lower penalties for those who cooperate in an anti-corruption inquiry, even if they have paid or received bribes themselves.

Let us consider, next, a scarce but legal benefit that is corruptly allocated to many individuals who would not qualify if pay-offs were eliminated. Neither those who pay nor those who receive bribes will voluntarily report the corrupt transaction. Those shut out of the process, however, have a grievance. For example, disappointed bidders for public contracts can facilitate efforts to limit corruption (Alam 1995). They should be rewarded for coming forward with evidence, even if the reason they lost the bid was not moral scruples but their own unwillingness to make a large enough pay-off.

Bribes paid to obtain illegal services are likely to be the most difficult to control. Bribers are often also engaged in other illegal activities and those who fail in their corruption efforts can hardly come forward to claim that they should have been the ones obtaining the illegal benefit. Nevertheless, the very vulnerability of bribers can be used to uncover corruption. They may accept lenient treatment with respect to, say, a violation of the drug laws, in return for providing evidence in a corruption trial. Deterrence will be aided if the law enforcement authorities can make

deals, even with admitted criminals, as a means of uncovering corrupt networks and illegal business organizations.

There is considerable variation across legal systems in the ability of police and prosecutors to make deals with those accused of crimes. The prevalence of plea-bargaining in the United States is well known and is used not just to save prosecutors' time, but also to facilitate investigations of white-collar crime such as corruption. Charges are routinely dropped or reduced in return for a person's cooperation in an ongoing investigation that seeks to implicate those at the top of a corrupt pyramid or on the other side of the transaction.

Some claim that plea-bargaining does not occur in the civil-law countries of continental Europe. However, several scholars have shown that although it has been formally forbidden in some countries, in practice it is quite common.[11] In recent years, some European countries, most notably Italy, have revised their penal procedure codes explicitly to permit plea-bargaining, an innovation that ought to make corruption investigations easier. In Italy, the new code, adopted in 1988, permits plea-bargaining that reduces sentences and appears de facto to envisage bargaining over the charge (Fassler 1991, pp. 263-265).

When organizations are the locus of corruption, one option is a system that rewards "whistle-blowers" within firms and public agencies who come forward with evidence of wrongdoing. Reporting the peculations of others can be dangerous. If corruption is systemic, a person who reports wrongdoing risks being disciplined by corrupt superiors and attacked by co-workers. One study of corruption in China suggests that this is a serious problem (Manion 1996). The whistle-blower may even end up being accused of corruption (*New York Times* 6 March 1998). Thus, Governments should consider promulgating statutes that protect and reward those who report malfeasance (Pope 1996, pp. 59-61). The United States, for example, has two such statutes: the False Claims Act rewards those who report irregularities in government contracts and protects private-sector whistle-blowers from reprisals (Howse and Daniels 1995; Kovacic 1996).[12] The Whistle Blower Protection Act protects whistle-blowers inside government agencies from retaliation.[13]

The False Claims Act pays whistle-blowers a share of the total penalties and other damages levied against firms for wrongdoing that has injured the Government. The rewards are available to people both inside and outside the firm, although not to government officials with direct responsibility for detecting contract violations. If the whistle-blower brings suit and is successful, he or she can recover 25-30 per cent of the penalty. If the Justice Department opts to join the action, the minimum recovery is reduced to 15 per cent because the Government will bear most of the legal costs. Unsuccessful private plaintiffs must bear their own legal costs, but not those of the firm, unless the court determines

[11] Fassler (1991, p. 246) cites the relevant articles in English.

[12] 31 USC Sections 3729-3731.

[13] Pub. L. No. 101-12, 5 USC 2302 (b) (8).

that the suit was clearly frivolous or vexatious (Howse and Daniels 1995, p. 526).[14] The law also protects whistle-blowers from retaliation by their employers.

A number of objections have been raised to this statute but, on balance, the law appears to serve a valuable purpose and can complement efforts at internal monitoring. In particular, the idea that corporate whistle-blowing will undermine internal control efforts seems misplaced. As Robert Howse and Ronald Daniels (1995, p. 537) argue, "the fear of being exposed to prosecution as a consequence of external whistle-blowing may be an important incentive for some corporations to adopt credible internal disclosure policies and procedures". The main problem in countries in the process of establishing the rule of law will be to clarify what practices are illegal and subject to criminal penalties. It will not make sense to protect or reward whistle-blowers unless it is made clear what they should be looking for.

Sometimes public officials claim that large firms virtually force bribes upon them. This seems a little disingenuous because the pay-offs are a cost to the firms involved. Nevertheless, to the extent this claim is credible, public officials could come forward with evidence of corrupt offers and seek protection under the Whistle Blower Protection Act. Firms would predictably defend themselves by arguing that the official demanded the pay-off. The distinctions in United States law may be useful here. Under the False Claims Act, the court can reduce the award for a whistle-blower who was involved in wrongdoing, but only if he or she planned or initiated the wrongful conduct. The award need not be eliminated, however, unless the whistle-blower is convicted of a crime.[15] Prosecutors with the authority to grant criminal immunity can thus set up a kind of a race in which the first to report the corrupt transactions will be rewarded, while the others are punished.

Corporate criminal liability[16]

Corporations have legal personalities, but this does not turn them into real human beings. For some commentators, this lack of humanity implies that corporations ought not to be subject to the criminal law because they cannot have mental states and so cannot be "guilty". Applying the criminal law to corporations gives them procedural protections and a presumption of innocence that are designed to protect the rights of individuals, not legal constructs (Thompson 1987, pp. 76-77; Khanna 1996).

The potential criminal liability of "legal persons" is an accepted part of United States law. By contrast, in many civil-law countries, organizations are excluded from criminal liability, although the trend may be changing

[14] 31 USC 3730 (d) (4).

[15] 31 USC 3730 (d) (3).

[16] For a fuller discussion of the issues raised here see Rose-Ackerman (2002).

with the incorporation of corporate criminal liability into the French criminal code in 1992 and into the Council of Europe's Criminal Law Convention on Corruption (Council of Europe 1999, art. 18). After the French revolution, France was the source of the prohibition of organizational criminal liability. Its code was adopted widely in Europe and has influenced criminal law in parts of the world where the civil-law tradition has been exported. Current French law, however, establishes criminal liability for organizations for a set of specified offences, including active corruption or peddling of influence (Orland and Cachera 1995, p. 114 and appendix, arts. 433-1 and 433-25). The law includes some special penalties for "legal persons", including the possibility of larger fines, exclusion from government procurement contracts and placement under various types of probation or court supervision (*Code Pénal* 2001, arts. 131-38 and 131-39).

The Netherlands has permitted corporate criminal liability since the mid-1970s, but Italy and Germany have constitutional provisions precluding corporate guilt, and the Belgian courts have refused to find corporations guilty of crimes. In Germany, however, administrative bodies can impose fines on corporations as well as on natural persons (Orland and Cachera 1995, p. 116; Khanna 1996, pp. 1488-1491). In Poland, corporate criminal liability does not exist, although legal persons can be required to pay damages for the negligence of their representatives (Council of Europe 2000, p. 21). The key issue for law reform in these and other countries is to find ways to hold legal persons responsible for organizational acts.

Organizations should not be anthropomorphized when discussing rights and responsibilities. Nevertheless, corporations can have responsibilities that cannot be reduced to individual obligations (De George 1993; Donaldson 1989). These responsibilities stem from "the practices of the organizations—the internal and external patterns of relationships—that persist even as the identities of the individuals who participate in them change" (Thompson 1987, p. 76; French 1979; Cooper 1968). The issue of corporate responsibility is important in the corruption context because, in the business world, most bribes are paid by employees and agents, not by top management. If pay-offs help a firm obtain business, managers and owners may hope to facilitate their subordinates' bribery, while remaining ignorant of the details.[17] Thus, one would like the law enforcement system to give top management an incentive to control the corruption of their subordinates. The important issue for policy is whether corporate criminal liability is the best way to do this or whether a system of civil fines and injunctions can serve the same purpose more effectively.

According to Jennifer Arlen (1994), if corporations are held criminally liable for the corrupt acts of their employees and agents, top management may not support an effective monitoring system. She analyses this

[17]Top managers will hope to rely on their subordinates' ability to rationalize such pay-offs. In one experimental study, business students and managers expressed a strong commitment to honesty as a value, but over 70 per cent were willing to pay a bribe to obtain business. The most frequently expressed justification was that "the first duty of a manager is to reach the company's goals. Therefore, it sometimes becomes necessary to forget about ethics" (Rosenberg 1987).

problem for the general case of corporate crimes and concludes that a number of alternative rules are superior to present United States law that imposes pure strict liability on firms. One possibility is a negligence rule, under which firms are only liable if they have neglected their internal enforcement responsibilities. For such a rule to be workable, however, the courts must be able to evaluate internal firm behaviour, which is a difficult task. One solution may be the drafting of quite precise directives that state what type of internal monitoring is required.

The United States Foreign Corrupt Practices Act does this by supplementing its prohibitions against paying bribes with accounting provisions that apply to firms within the jurisdiction of the Securities and Exchange Commission. These firms must establish accounting systems that accurately reflect transactions involving the firm's assets, and they must have an effective system of internal accounting controls. Firms and their managers can be subject to both civil and criminal penalties for violating these accounting provisions (Jadwin and Shilling 1994, pp. 679-680; Nobles and Maistrellis 1995, pp. 9 and 19; Pickholz 1997, p. 237). There is no formal due diligence defence to the Act but, in practice, firms that establish and enforce effective internal control systems appear to experience more lenient treatment. The Federal Sentencing Guidelines also reward internal firm efforts to detect and punish violations of the law (Nobles and Maistrellis 1995, pp. 18-24). Thus, United States law attempts to counter management's incentive to insulate itself from the profit-maximizing malfeasance of employees and agents. Nevertheless, some insulation is currently possible through the use of foreign firms as sales agents (Nobles and Maistrellis 1995, p. 25). The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions holds firms responsible for the corrupt acts of their agents in international business transactions. This Convention has the potential to spur an interest in the promulgation and enforcement of corporate codes of conduct among multinational firms throughout the world.

Organized crime and international criminal enterprise

Illegal businesses seek to operate securely by paying off the police, politicians and judges or by permitting them to share in the profits of illegal businesses. But such businesses are also vulnerable to extortionary demands. Law enforcement authorities, from the police to prosecutors and judges, can demand payments to overlook criminal law violations or limit penalties. If the evidence of criminal behaviour is clear, such businesses will be unable credibly to threaten to report corrupt demands.

Of course, illegal businesses are hardly innocent victims. They often actively try to corrupt the police. They seek not only immunity from prosecution for themselves, but also assurance of monopoly power in the illegal market. Both in the United States and in Latin America, gamblers and drug dealers have paid officials to raid their competitors or to restrict entry (Rose-Ackerman 1978, p. 163; *New York Times* 12 May 1996; *New*

York Times 30 July 1996; *Washington Post* 28 January 1996). In Thailand, some local public authorities shelter criminal enterprises both from competition and from the law (Phongpaichit and Piriyarangsan 1994, pp. 51-97). In the Russian Federation, those engaged in illegal businesses sometimes engage in outright intimidation of potential rivals, often paying off the police not to intervene in their private attempts to dominate the market (Handelman 1995).

The danger for economic development arises when organized criminal groups begin to dominate otherwise legal business; southern Italy, the Eastern European countries and those of the former Soviet Union are cases in point. Several Asian and Latin American countries face similar risks. Organized crime groups can use the profits of illegal enterprise not only to assure the complicity of public officials, but also to infiltrate legal businesses. The profits generated by illegal businesses, earned without paying taxes, can then be reinvested in legitimate business and in obtaining public contracts (Gambetta 1993; Varese 1994).

The stakes are especially high in Eastern Europe and the countries formed after the collapse of the Soviet Union. Nothing less than the entire wealth of the State is up for grabs. The value of sharing in the privatization of a socialist State dwarfs the benefits of sharing in the privatization of a public utility in Western Europe or a steel mill in a developing country. Both criminal groups and legitimate business concerns seek to share in the wealth. If criminals can create an atmosphere of uncertainty and threaten violence they will drive competitors away, especially Western firms, leaving the criminal groups with a free run (Shelley 1994). In fact, foreign direct investment from legitimate business has not been large in the countries that once formed the Soviet Union and it varies greatly from country to country (United Nations Conference on Trade and Development 2000). One explanation for these results is the weakness of state institutions and the corruption and organized crime influence to which this gives rise. Although a recent study argues that privatization in Eastern Europe and the former Soviet Union has been, on balance, beneficial in spite of admitted problems, the authors point to serious deficiencies in the legal system (Kaufmann and Siegelbaum 1997).

Even in developed countries, some legitimate businesses are especially vulnerable to criminal infiltration. Organized crime is both wealthy and unscrupulous. It is willing to use not only bribery, but also threats and violence to enforce its contracts and get its way. In the most successful examples, the legitimate businesses that operate under Mafia protection earn sufficient monopoly rents to make them supporters of the continued influence of organized crime. Diego Gambetta and Peter Reuter (1995, p. 128) provide a list of the factors favouring the emergence of Mafia-controlled cartels. In the most favourable cases, product differentiation and barriers to entry are low, technology is unsophisticated and labour unskilled, demand is inelastic and the industry consists of a large number of small firms. Private garbage collection provides a good example. Entry is inexpensive; all that needs to be purchased is a truck. However, because garbage trucks operate alone on the public streets, it is relatively easy to

intimidate unwanted rivals by attacking their trucks without attracting police attention. To minimize the risks for organized crime, but at a cost, the Mafia can pay the police to look the other way (Reuter 1987).

Similarly, the ability of a business to corrupt officials to gain approval of a licence to enable it to operate and to deny such approval to its rivals yields an obvious competitive advantage. Labour unions, with or without connections to organized crime, can use this tactic. For example, an official of the United Union of Roofers in Philadelphia was convicted of bribing an official of the Occupational Safety and Health Administration to harass non-union roofing contractors.[18]

Legal businesses that benefit from prime urban locations are especially at risk in countries with weak or corrupt police forces. This includes restaurants and shops serving tourists and business travellers. Manufacturers can hide in out-of the-way locations (Webster and Charap 1993), but service businesses cannot "go underground". If the police are unreliable, criminal groups may demand protection money from businesses and threaten to attack those that do not pay (De Melo, Ofer and Sandler 1995; Webster 1993; Webster and Charap 1993).

Businesses such as road repair and building construction that do considerable business with the State are also prime candidates for falling under the influence of organized crime. If organized crime has already corrupted a Government in order to run its illegal businesses, it may be a relatively short step from there to making pay-offs to obtain public contracts on favourable terms. In the extreme, organized criminal groups manage cartels that share contracts and pay off public officials to buy their complicity, or at least their silence. In southern Italy, for example, a survey revealed that over half of the small and medium-sized businesses had reported that they had withdrawn from a public tender after pressure from criminal groups or their political allies (*The Economist* 5 February 1994).

The wealth, unscrupulousness and international connections of many organized criminal groups prevent control by any one country. The danger is that, rather than being a stage of development that will wither away over time, criminal activity becomes so intertwined with politics that it is difficult to tell them apart.

It follows that anti-corruption efforts should be coordinated with another international campaign: the fight against organized crime. There are two reasons for this: first, both corrupt rulers and international criminal enterprise benefit if it is easy to launder money across national borders. Accepting bribes will be more attractive if it is relatively easy to deposit the funds outside the country. Thus, strong international action against money-laundering can help mitigate both problems. Second, the existence of large-scale illegal businesses is likely to have a corrupting influence on government, especially law enforcement and border control. Corrupt rulers and illegal businessmen feed on each other. Illegal businesses must pay bribes in order to operate. The bribe receipts, being

[18]United States v. Traitz, 871 F.2d 368, 375 (1989).

illegal, are themselves especially likely to provide capital to illegal businesses worldwide, which reduces the cost of capital to them and fuels their growth relative to legal business ventures.

If corruption is combined with organized crime, the problem for domestic law enforcement is multiplied. The experience of developed countries in fighting organized crime may be useful in some contexts. In developing countries, which tend not to be used to confronting organized crime, a combination of training and law reform is a useful first step. But such reforms are unlikely to be sufficient unless the economy is strong and competitive. The State may need to make more direct efforts to reduce the excess profits available to criminal entrepreneurs in legitimate business.

One solution is promoting the entry of well-capitalized legitimate businesses that, with some state help on the law enforcement side, can compete with Mafia-dominated firms. For example, the courts mandated the entry of large multinational waste management firms into the trash-hauling industry in New York City. This strategy reduced the influence of organized crime and lowered garbage removal costs for the commercial businesses not serviced by the Sanitation Department. State prosecutors estimated that garbage removal fees of $1.5 billion in 1995 were inflated by as much as $400 million. In recent years, the cost of garbage removal has fallen by 30-40 per cent for most businesses (*New York Times* 28 February 1994; *New York Times* 30 July 1995; *New York Times* 23 December 1995; *New York Times* 11 May 1998).

A country's links to the broader world can either limit or expand the scope for organized crime. On the one hand, an open trading and investment regime will make it easy for both contraband and the profits of crime to flow across borders. The existence of banking havens where black money can come to rest makes domestic criminal activity less risky because money can be easily hidden abroad. On the other hand, open borders facilitate investment by outsiders in a country. If these outsiders are not part of the domestic criminal bodies and are not associated with such groups elsewhere, they may challenge entrenched groups. Of course, if such investments are costly and dangerous, few may make the effort, but a country's openness to foreign investment at least makes them worth consideration.

One role for international organizations and for law enforcement agencies in developed countries is the compilation of information on questionable transactions, combined with the prosecution of individuals and organizations based in developed countries that do business in developing countries.

Conclusions

Under criminal law, finding the right mix of penalties, rewards and undercover law enforcement is not easy. Nevertheless, one important lesson of the economic analysis of crime is clear: anti-corruption policy should never

aim to achieve complete rectitude. Those who take an absolutist position are likely to impose rigid and cumbersome constraints that increase, rather than decrease, corrupt incentives. The goals of law enforcement should be to isolate those corrupt systems which are doing the most damage to society and then to organize the deterrence effort to make corruption costly on the margin and to give participants an incentive to report corrupt deals.

The criminal law can deter corruption in several ways. First, substantive criminal law may need to be re-examined to determine if some private activities might be decriminalized, thus reducing corruption and the involvement of organized crime. Alternatively, some currently acceptable activities, such as conflicts of interest, may need to be regulated or outlawed. Second, penalties for paying and receiving bribes ought to reflect the marginal gains of bribers and the recipients of bribes. The former should be penalized in proportion to the gains that bribes make possible; the latter in terms of the benefits of the pay-offs themselves. Third, given the background level of penalties, prosecutors and investigators ought to be able to reward those who provide useful information that helps authorities uncover hidden corrupt networks. This will often involve making deals with those who have paid and received bribes in the past. Fourth, issues of individual responsibility should not deter law reformers from finding ways to hold organizations such as corporations legally responsible for the corrupt acts of their agents. This may involve holding the organizations criminally liable themselves, but similar results may be possible with purely civil penalties, provided that they can be tied to corrupt acts that are related to the enterprise's activities. Finally, special efforts will often be needed to counter the influence of organized crime, especially when it operates on an international scale: international cooperation is needed to unravel corrupt networks and recover the proceeds of illegal businesses.

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Legal provisions to facilitate the gathering of evidence in corruption cases: easing the burden of proof

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Abstract

The present article explains the strategic value of facilitating the gathering and evaluation of evidence by easing the burden of proof in order to overcome the inability of the criminal justice system to respond effectively to non-conventional crime such as corruption, money-laundering and organized crime.

Introduction

Unlike most other crime, the offence of corruption has no obvious victim who could complain. Everyone involved in its commission is a beneficiary and has an interest in preserving secrecy. As it is exceptionally difficult to obtain clear evidence of the actual payment of a bribe, corrupt practices frequently remain unpunished. However, while evidence of the commission of specific corrupt acts may be lacking, circumstantial evidence is often available. This may be as stark as the model of the car that a junior officer drives to work or as the schools abroad at which the children of a senior official are being educated.

With the increase in the levels of corruption and in the complexity of methods used to transfer bribes, there is a growing need in many societies for an effective and efficient legal framework for the investigation and prosecution of corrupt acts. In particular, there is a need to render laws enforceable by greater resort to circumstantial evidence, but only to the extent consistent with international human rights norms, including the principle of the presumption of innocence. The challenge is to strike the

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right balance between, on the one hand, society's need to protect itself from corrupt practices and, on the other, the need to safeguard the accused from unfairness, unjustified intrusion into his or her privacy, or wrongful conviction (De Speville 1997). In this regard, some national legislators have chosen to focus on the results of the criminal act rather than on the illicit practice at its root. The two main strategies aim at criminalizing unexplained wealth and facilitating the confiscation of such wealth.[2]

Criminalizing the possession of unexplained wealth

There is an increasing tendency to criminalize the possession of unexplained wealth by introducing an offence that penalizes a public servant (or former public servant) who is or has been maintaining a standard of living or is in possession of pecuniary resources or property significantly disproportionate to his or her present or past official salary and who is not able to give a satisfactory explanation in this regard. Criminalizing the possession of such wealth, which is described in some jurisdictions as "illicit enrichment" or possession of "unexplained wealth", has now become an accepted measure in the fight against corruption.[3]

Confiscation of unexplained wealth

Far more widespread than measures to criminalize the possession of unexplained wealth are those designed to facilitate the confiscation of such wealth. These were, in the past, adopted in respect of drug-related offences by States seeking to implement the provisions of article 5, paragraph 7, of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (United Nations 1994):

> "7. Each Party may consider ensuring that the onus of proof be reversed regarding the lawful origin of alleged proceeds or other property liable to confiscation, to the extent that such action is consistent with the principles of its domestic law and with the nature of the judicial and other proceedings."

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[2]The steadily growing number of regional and international initiatives and instruments designed to combat not only corruption but also organized crime, drug trafficking and money-laundering include the 40 recommendations of the Financial Action Task Force on Money Laundering (1996), the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (United Nations 1998), adopted by the Organisation for Economic Cooperation and Development (OECD) on 21 November 1997; the Inter-American Convention against Corruption (E/1996/99), adopted by the Organization of American States (OAS) on 29 March 1996; and the United Nations Convention against Transnational Organized Crime (General Assembly resolution 55/25, annex I).

[3]See Hong Kong Special Administration Region of China, Prevention of Bribery Ordinance, s.10; Botswana, the Corruption and Economic Crime Act, art. 34; the OAS Inter-American Convention against Corruption, art. IX; Greece, Law on Money Laundering, No. 2331, 24 August 1995, arts. 2 and 3; Kenya, Narcotic Drugs and Psychotropic Substances Act, No. 4, 8 July 1994, arts. 36 and 40.

The domestic response has included an easing of the burden of proof,[4] a reversion of the burden of proof[5] and even an irrebuttable presumption of the illegal origin of the assets in question.[6] In many legal systems, confiscation is not regarded as a penalty but as a "compensating measure" aimed at depriving the offender of what he or she has acquired illegally and therefore has no right to possess. Its purpose is to replace the offender in the same situation (economically) as that in which he or she was before the offence was committed.[7] For example, in 1994 in Hong Kong,[8] the Court of Appeal held that the presumption of innocence did not apply to confiscation proceedings under the Drug Trafficking (Recovery of Proceeds) Ordinance 1989, since those proceedings did not involve the determination of a criminal charge.[9]

The effectiveness of such measures varies significantly, depending on how strong a link is required between the unexplained wealth and the criminal act from which such wealth originated. Some countries allow the confiscation without requiring a prior conviction, the only criteria being the absolute disproportion between the assets and the known sources of income, and the unwillingness or inability of the "owner" to provide a satisfactory explanation for their acquisition. In other words, a rebuttable presumption is applied that the assets are derived from criminal activities.[10] Other countries require a conviction, thus creating a link between the criminal act and the assets to be confiscated. An obvious disadvantage of this approach is that it is sufficient for the accused person to show that the property or pecuniary resources in his or her possession were not derived from the offence of which he or she has been convicted. The confiscation provision thus becomes a "toothless tiger", especially in the case of an offender whose illicit wealth has been accrued systematically over a long period of time and who, though found guilty of a criminal act, is able to demonstrate that his or her wealth was not derived from

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[4]See Italy, Law No. 356, art. 12; Germany, Strafgesetzbuch (Criminal Code), art. 78d; and Singapore, Confiscation of Benefits Act, s. 4.

[5]See Greece, Law on Money Laundering, No. 2331, 24 August 1995, arts. 2 and 3; Norway, General Civil Penal Code, art. 34a; Kenya, Narcotic Drugs and Psychotropic Substances Act, No. 4, 8 July 1994, arts. 36 and 40; Japan, Anti-Drug Special Law, art. 8.

[6]In El Salvador, article 46 of Law No. 78 of 5 March 1991 establishes a presumption in law that the "monies or proceeds are derived from transactions connected with drug-related offences if, within a maximum period of three years computed retroactively, their negotiation has been proposed or requested by or on behalf of a person prosecuted for any of the offences under this Law".

[7]The situation might be different in the case of confiscation of the *instrumenta sceleris* or *producta sceleris*, where a penalty-like effect might prevail.

[8]On 1 July 1997, the territory of Hong Kong became the Hong Kong Special Administrative Region of China.

[9]*R. v. Ko Chi-Yuen*, Court of Appeal of Hong Kong (1994), 4 HKPLR 152.

[10]In Italy, article 2 of Law No. 575 of 31 May 1965 provides for the seizure of property owned directly or indirectly by any person suspected of participating in Mafia-type associations when its value appears to be out of all proportion to his or her income or economic activities or when it can be reasonably argued, based on the available evidence, that said property constitutes the proceeds of unlawful activities. The seized property becomes subject to confiscation if its lawful origin cannot be proved (see also United States of America, Anti-Drug Abuse Act 31 USC, s. 5316; and Ireland, Proceeds of Crime Act 1996 and Criminal Assets Bureau Act 1996).

that one criminal act or was acquired through other criminal acts for which he or she cannot be prosecuted because of the operation of a statute of limitations.

Another approach, one that is perhaps more innovative and has been adopted in certain legal systems that accord constitutional protection to both the presumption of innocence and the right to property, is the so-called property penalty.[11] As its name suggests, it is a provision that enables not the confiscation of property of illegal or apparently illegal origin but the imposition of a penalty. Problems have, however, been encountered in its application. For example, in Germany, the legislature failed to prescribe a clear system by which the application of the property penalty would be compensated by a reduced prison term; it was left to the judiciary to develop such a system on a case-by-case basis.[12] Moreover, it was argued that wealthy offenders may more likely receive a reduction of their penalty, while those whose resources are exhausted would be denied the opportunity to "buy themselves out" of prison (see, for example, Eser (1993)).[13] A fourth approach is that of administrative sanctions, such as the loss of office, the loss of licences and procurement contracts, and exclusion from certain professions.[14] None of these sanctions requires proof of illicit origin of the assets "beyond reasonable doubt", but regards a "high degree of probability" resulting from the inability of the owner to prove the contrary as sufficient to meet the evidentiary requirement.

The presumption of innocence

Everyone charged with a criminal offence has the right to be presumed innocent until proved guilty according to the law. This right is recognized not only under international and regional human rights instruments,[15] but also under most national constitutions. The presumption of innocence contains three fundamental components: the onus of proof lies with the prosecution; the standard of proof is beyond reasonable doubt; and the method of proof must accord with fairness.[16] Its objective is to minimize

[11]See Germany, Strafgesetzbuch (Criminal Code), art. 43a; see also United Kingdom, Drug Trafficking Offences Act of 1986 and Drug Trafficking Act of 1994.

[12]For that reason the article was found to violate the principle of legality and declared unconstitutional by the German constitutional court.

[13]However, these reservations were not shared by the German High Court, since the provision "is not containing any presumption in law regarding the origin of the property of the accused" (Bundesgerichtshof, Fifth Senate, *Neue StrafrechtsZeitschrift* 1995, 333; confirmed by the Third Senate, *Neue StrafrechtsZeitschrift*, 1996, p. 78.

[14]For example, Italy, Law No. 575/1965.

[15]*R. v. Oakes*, Supreme Court of Canada (1987), LRC (Const) pp. 477 and 489.

[16]Universal Declaration of Human Rights (General Assembly resolution 217 A (III)), art. 11, para. 1; International Covenant on Civil and Political Rights (Assembly resolution 2200 A (XXI), annex), art. 14, para. 2; Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms (United Nations, *Treaty Series*, vol. 213, No. 2889), art. 6, para. 2; American Convention on Human Rights (United Nations, *Treaty Series*, vol. 1144, No. 17955), art. 8, para. 2; and African Charter of Human and Peoples' Rights, art. 7, para. 1.

the risk that innocent persons may be convicted and imprisoned. The Committee on Human Rights has emphasized that no guilt can be presumed until the charge has been proved beyond reasonable doubt. Indeed, none of the international or regional human rights instruments permit any limitations to be placed by law on the presumption of innocence.

However, with the emergence or escalation of organized crime, drug trafficking, terrorism and corruption, in many legal systems the operation of other statutory presumptions of law or fact have been considered necessary for the effective administration of criminal justice. The pre-eminent position accorded to the presumption of innocence means that these presumptions of law or fact require to be confined within reasonable and appropriate limits.[17] In no circumstances should an accused be required to do more than raise a reasonable doubt as to his or her guilt. Accordingly, a presumption that relieved the prosecution of part of its burden of proving all the elements of a criminal charge, so that a conviction could result despite the existence of a reasonable doubt as to the guilt of an accused person, would be inconsistent with the presumption of innocence.[18]

There does not appear to be a common formula that could be applied to determine whether a statutory presumption of law or fact conflicts with the presumption of innocence. The degree of flexibility that is normally assumed to be implicit in a provision of general application is perhaps also permitted in respect of the presumption of innocence. One example of this is the case of an offence involving the performance of some act without a licence. Common sense dictates that the prosecution should not be required to shoulder the virtually impossible task of establishing that a defendant does not have a licence when it is a matter of comparative simplicity for the defendant to establish that he or she has one (*Halsbury's Laws of Hong Kong* 2001, p. 470).

The Judicial Committee of the Privy Council of the United Kingdom, sitting in Hong Kong's court of final appeal, observed that this "implicit flexibility" allows a balance to be drawn between the interests of the person charged and the State in "situations where it is clearly sensible and reasonable that deviations should be allowed from the strict application of the principle that the prosecution must prove the defendant's guilt beyond reasonable doubt". Whether an exception is justifiable will in the end depend upon whether it remains primarily the responsibility of the prosecution to prove the guilt of an accused to the required standard and whether the exception is reasonably imposed, notwithstanding the importance of maintaining the principle enshrined in the presumption of innocence. The less significant the departure from the normal principles, the simpler it will be to justify the exception. If the prosecution retains responsibility for proving the essential ingredients of the offence, it is less likely that an exception will be regarded as unacceptable. In deciding what are the essential ingredients, the language of the relevant statutory provision will be important. However,

[17] *Salabiaku v. France*, European Court of Human Rights (1988), 13 EHRR 379.

[18] In El Salvador, article 46 of Law No. 78 of 5 March 1991 may contain such a provision.

what will be decisive is the substance and reality of the language creating the offence rather than its form. If the exception requires certain matters to be presumed until the contrary is shown, then it will be difficult to justify the presumption unless it can be said with substantial assurance that the presumed fact is more likely than not to flow from the proved fact on which it is made to depend.[19]

Rebutting a presumption of fact

In most cases, there are three potential ways in which the presumed fact may be rebutted. First, the accused may be required merely to raise a reasonable doubt. Second, the accused may have an evidentiary burden to adduce sufficient evidence to bring into question the truth of the presumed fact. By so doing, he or she raises an issue before it has to be determined as one of the facts in the case. Third, the accused may have a legal or persuasive burden to prove on a balance of probabilities the non-existence of the presumed fact. A persuasive burden reverses the burden of proof by removing it from the prosecution and transferring it to the accused and is therefore, as far as criminal conviction is concerned, in breach of the presumption of innocence. If the accused has a legal burden of disproving on a balance of probabilities an essential element of an offence, as the third option mentioned above would require him or her to do, a conviction could occur despite the existence of a reasonable doubt. That would result if the accused adduced sufficient evidence to raise a reasonable doubt as to his or her guilt but did not convince the court on a balance of probabilities that the presumed fact was untrue.[20]

Application of a "reverse onus" provision

The question of whether a so-called "reverse onus" provision is consistent with the presumption of innocence was examined in Hong Kong, where the Hong Kong Bill of Rights Ordinance 1991 had entrenched the International Covenant on Civil and Political Rights in the constitution of that territory. Section 10 of the Prevention of Bribery Ordinance of Hong Kong, which preceded the Bill of Rights, provides that "any person who, being or having been a public servant, *(a)* maintains a standard of living above that which is commensurate with his present or past official emoluments; or *(b)* is in control of pecuniary resources or property disproportionate to his present or past official emoluments, shall, unless he gives a satisfactory explanation to the court as to how he was able to maintain such a standard of living or how such pecuniary resources or property came under his control, be guilty of an offence." The validity of section 10 was challenged on the grounds of inconsistency with the constitutionally guaranteed presumption of innocence.

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[19] *Attorney General v. Lee Kwong-kut* (1993), 1 HKPLR 72.

[20] *Lingens and Leitgens v. Austria*, European Court (1981), 4 EHRR 373.

The Court of Appeal of Hong Kong held that section 10, paragraph 1, places the burden of proving the absence of corruption on the defendant. But before he or she is called upon to do so, the prosecution has to prove beyond reasonable doubt the public servant status of the accused, his or her standard of living during the charge period and his or her total official emoluments during that period; in addition, the prosecution has to prove that his or her standard of living could not reasonably, in all the circumstances, have been afforded out of his or her total official emoluments during that period. Once those matters have been proved by the prosecution, the defendant has to give a satisfactory explanation as to how he or she was able to maintain an incommensurate standard of living or how disproportionate pecuniary resources or property came under his or her control. Ordinarily, the primary facts on which the defendant's explanation would be based, such as the existence of any capital or income independent of his or her official emoluments, would be peculiarly within the defendant's own knowledge. If the defendant "proves" on a "mere balance of probabilities" the factual matters on which his or her explanation is based, the court has to decide whether or not such matters might reasonably account for the incommensurate standard of living or disproportionate pecuniary resources or property.[21]

The court stressed that the explanation requirement was not triggered by trifling incommensurateness or disproportion. Unless something is more than trifling, the court cannot safely hold that it even exists. What really triggers the explanation requirement is incommensurateness or disproportion that is unreasonable in the circumstances. Even where that threshold is reached, it is still the case that the slighter such incommensurateness or disproportion is, the less is required by way of an explanation for the same. The court observed that where corruption is concerned, there is a need, within reason, of course, for special powers of investigation and an explanation requirement. Specific corrupt acts are inherently difficult to detect, let alone prove in the normal way. The true victim, society as a whole, is generally unaware of the specific occasions on which it is victimized; and, unlike in dangerous drug cases, there is no obviously unlawful commodity such as the drugs themselves that the offender can be in possession of. Accordingly, section 10, paragraph 1, was consistent with the constitutional guarantee of the presumption of innocence. It was dictated by necessity and went no further than necessary.[22]

Conclusion

The expression "reverse onus" is perhaps both unfortunate and inaccurate. Its continuing use invariably leads to controversy. To "ease" the burden of proof ought not to be regarded as "shifting" the burden to the accused

[21] It should be noted that the terms "prove" and "mere balance of probabilities" are used in the judgement not with reference to the explanation as such, but to the primary facts or factual matters on which the explanation is based.

[22] *Attorney General v. Hui Kin-Hong*, Court of Appeal of Hong Kong, 3 April 1995.

person. The focus should be on what the Judicial Committee of the Privy Council has described as the doctrine of "implicit flexibility". To "ease" the burden of proof should be viewed as drawing the right balance between the rights of the accused person and the interests of the community in situations where, without eroding the rights, common sense dictates that an explanation be sought from an official in possession of disproportionate wealth.

Efforts to ease the burden of proof in corruption cases have been criticized for a lack of rationality or proportionality or both (Hodgson 1984, p. 82; Perron 1993, p. 918; Wesslau 1991). It has been argued that the interest of society in combating corruption should not outweigh an individual's fundamental rights. However, the rationale for the offence of "illicit enrichment" and authority for the confiscation of "unexplained wealth" is, on the one hand, deterrence and, on the other, the positive effect that punishing offenders would have on restoring confidence in the rule of law. The theory of deterrence, which is founded upon the assumption that man is a *homo economicus* whose decisions are the outcome of a careful weighing of advantages and disadvantages, has been rejected so often that it can almost be discarded. Research reveals that the probability of apprehension, prosecution and conviction is seldom considered by an offender. Corruption and extortion, its twin, differ from many other offences in that they are motivated less by revenge, hate or even the inability to eke out a living through lawful means than by excessive greed. Confiscation, if designed as an effective measure, is likely to have an impact at the initial stage of demanding and accepting a bribe.[23] Moreover, empirical evidence suggests that society regards prompt and effective punishment as one (and possibly the most important) element of a credible anti-corruption strategy (Inspectorate of the Government of Uganda (n.d.), p. 18).

Despite having emerged as a controversial issue at the early stages of the negotiation of a draft convention against corruption,[24] easing the evidential burden of proof in respect of corruption offences appears to be both necessary and desirable in order to deter potential offenders as well as to facilitate the investigation and successful prosecution of such

[23]According to Michael Levi (2000), corrupt officials follow a "Business plan", which involves all pros and cons regarding the planned crime.

[24]See, for example, the proposals and contributions submitted by the Governments of Sri Lanka (A/AC.261/IPM/7) and Switzerland (A/AC.261/IPM/2) to the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption, held in Buenos Aires from 4 to 7 December 2001; see also the following comments submitted by the Government of Indonesia to the Informal Preparatory Meeting (A/AC.261/IPM/16, para. 25): "The future instrument could also devise new means of overcoming the secrecy of corruption by increasing the significance of circumstantial evidence indicating some source of illicit income of a public official. Criminal and/or administrative sanctioning of the possession of unexplained wealth is only one option that could be taken into consideration. Another possibility consists of developing measures to deprive the public official of his or her inexplicable wealth if he or she maintains a standard of living or is in control or possession of financial resources or property disproportionate to his or her present or past known sources of income and fails to give a satisfactory explanation in that regard. Finally, it may also very well prove necessary to rethink the concept of 'penalty' as such and to start to rely more heavily on 'property penalties' for certain types of crime rather than on imprisonment, or a combination of both."

offences. It is likely to alter the equation of "risk versus reward" that lies at the heart of many calculations when it comes to deciding whether or not to engage in corruption. If successful detection and prosecution are rendered more likely, and a loss of the rewards more probable, then it follows that individuals will be less tempted to engage in misconduct. The challenge, therefore, is not simply to reverse the burden of proof, but to identify the situations where, in the face of strong circumstantial evidence, a person ought to be called upon to explain that which only he or she knows, namely, how he or she came to be in possession of wealth grossly disproportionate to his or her known legitimate income.

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The measurement problem: a focus on governance

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Abstract

Corruption is usually a clandestine activity and frequently does not have a direct victim. Moreover, those with knowledge of a corrupt act generally have an interest in concealing it. It is unclear what a "high level of corruption" refers to: the number of corrupt actions over time, the size of the stakes involved, the level of government at which they occur? For these and other reasons, corruption is impossible to measure directly. Indices based on perceptions, while useful for raising consciousness of the corruption issue, have drawbacks of their own. Still, anti-corruption agencies must gauge the effects of their reforms and demonstrate those effects in credible ways to citizens, political leaders, journalists and, perhaps most important, to those who might become involved, or are already involved in corruption. The authors of the present article argue that the best way to accomplish these goals is to measure aspects of governance that reflect both the incentives to engage in corruption and its effects. Measuring the time, expense and number of steps involved in obtaining or providing routine government services, the experiences of citizens and firms in dealing with officials and the quality of routine outputs reveal a great deal about the ways corruption affects governance. They also help to assess trends in the delays and "squeeze points" that create opportunities to demand bribes and incentives to pay up. Gathering such data, via agencies' own internal monitoring and public surveys, is a governance-improvement activity in its own right. It also broadens the base of responsibility for reform: agency managers, their private clients and citizens in general are brought into the assessment and accountability processes. Finally, by keeping the focus on the quality, effectiveness and accountability of governance, reform is linked to the major reasons why corruption is an important concern in the first place.

Introduction

Comparing levels of corruption, much less measuring them with any precision, remains a difficult challenge for analysts and policy makers alike. Even

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where there is consensus on the definition of corruption, which is frequently not the case (Johnston 2001; Philp 2002), it is usually a clandestine activity lacking immediate victims with an interest in reporting cases to authorities. All those involved in a corrupt act generally have an interest in keeping it secret; others with direct knowledge can often be intimidated, discredited or bought off by the participants or may even use their knowledge to demand a share of the spoils. Open allegations of corruption may have little to do with the reality of the problem: claims by citizens, journalists and competing political leaders and factions may reflect a variety of motives. And where corrupt officials are so entrenched that they practise their schemes with impunity, whole administrative and political systems are converted to the service and protection of corrupt interests, a fact whose gravity far overshadows the question of whether or not the numbers of specific corrupt dealings are rising or falling.

A related, if less frequently noted, complication has to do with what is meant by "levels" of corruption as such (Rose-Ackerman 1999, p. 4; Lambsdorff 1999, pp. 7-8). Does "more corruption" mean that instances of corruption are more frequent, that they involve larger amounts of money and goods diverted or that greater damage is being done to public trust and effective administration? How should the following be classified: a society or jurisdiction where corrupt deals are relatively infrequent but are very large and tightly controlled by the elites? Are all varieties of corruption, ranging from bribery to patronage abuses to official theft to illegal party funding practices (to name but a few), equal or should some of them be weighed more heavily?

Corruption is likely to remain impossible to measure directly for the foreseeable future. And, apart from questions of methodology, reformers face the additional challenge of winning and maintaining credibility. To make matters worse, many existing corruption scales are likely to produce ironic results: superficial changes may alter perceptions for the better without attacking underlying problems, while serious, well-conceived reforms leading to significant new revelations, dismissals, trials and convictions may foster the perception that the problem is growing worse. Neither approach is likely to produce visible change in the most sophisticated measures based on "hard" indicators, which incorporate a range of systemic variables into sophisticated cross-sectional models (often resting on complex statistical assumptions) comparing large numbers of countries. The best of these suggest that only a few societies can reliably be placed in high- or low-corruption categories, while the rest reside in a broad middle category where precise distinctions and comparisons cannot be made with confidence (Kaufmann, Kraay and Zoido-Lobatón 1999, pp. 2 and 15-19). Further, while most corruption measures treat whole societies as units of analysis, many anti-corruption agencies are charged with reforming specific provinces, cities, agencies or governmental functions. Even those with countrywide responsibilities deal with specific activities that exist at levels far removed from the level of national rankings.

There are no obvious answers to these problems, yet finding useful ways to compare levels of corruption remains a necessity. Scholars and analysts need good data for building models and testing hypotheses. Anti-corruption agencies and their backers, the main focus in the present article, need valid and reliable indicators even more, for they must demonstrate the effectiveness and credibility of their reform measures, both to those they serve and to others who are, or may become, involved in corrupt dealings. What, then, can be done to improve assessments of levels and trends in corruption?

Such efforts should not focus on the measurement of corruption itself, but rather on those aspects of governance that create incentives to corruption and reveal its effects. While corruption itself will remain impossible to measure directly with validity, reliability and precision, good data can be developed for assessing deeper problems. Slow and needlessly complex policy processes enable officials to demand payments and give private parties reasons to speed things up with cash. Inflated prices for common government services may signal significant corruption; viewed from the private sector, they also create incentives for dishonest and inefficient vendors to feed on the public budget while driving out efficient enterprises. Perceptions figure into this approach as well, not as a basis for measuring corruption but again, as an indicator of deeper difficulties and incentives: where people believe that nothing can be done without paying up, they may refrain from using established channels of accountability, are more likely to give in to corrupt demands by officials or to the entreaties of various middlemen and touts (Oldenburg 1987), may contrive corrupt schemes and networks of their own or may give up on dealing with officials at all, if they can avoid them. (For possible responses by losers in corrupt exchanges, see Alam (1995)). In effect, what is proposed is "back-to-basics" emphasis on the issues that make corruption worth worrying about in the first place. Whose interests are served by government? How effectively are public power and resources used? Are there ways in which current patterns of governance make corruption more likely and easier to conceal? Is the quality of governance and administration improving or deteriorating? Even if corruption could be measured directly, these would remain the most important issues for reformers. As suggested below, the process of gathering quality-of-governance indicators and making them public is not only a way to judge trends in corruption and reform, but also an important anti-corruption tactic in its own right.

A range of options

Attempts to measure corruption itself have involved several approaches. (For a general review and critique, see Johnston (2001)). Perception-based corruption indices draw upon opinion surveys or expert estimates of how corrupt various countries are. The best-known of these, Transparency International's Corruption Perception Index (Transparency International

2001a, 2001b) merges several such surveys and expert rankings into a standardized scale. Other comparisons have been based upon arrest or conviction data (Schlesinger and Meier 2002) for corruption offences. Hybrid approaches, such as the PriceWaterhouseCoopers "Opacity Index" (2001), incorporate into multi-component indices perceptual ratings, hard economic and social data and indicators such as interest premiums paid on sovereign debt by nations with transparency problems. The most sophisticated estimates draw upon a range of "hard" economic and institutional indicators (Kaufmann, Kraay and Zoido-Lobatón 1999), in effect treating corruption and the quality of governance as terms in elaborate statistical models.

All of these approaches have their uses and merits: all have helped put corruption back onto the international policy agenda and enhanced the understanding of the causes and effects of corruption. Perceptual scales in particular have helped put pressure upon governments and societies to take action. But none of these approaches is appropriate for an anti-corruption agency that needs credible evidence of the effects of its reforms in specific cases. Perception data are just that—estimates of how corrupt a society is thought to be—and are thus open to influence and distortion from the full range of factors affecting any human judgements. They may well be adversely affected by successful anti-corruption action, at least during the early phases of reform. Conviction or arrest data, properly deployed, can help people understand how various societies and their legal institutions respond to corruption, but they tell little about the "dark number" of cases that never come to the attention of authorities. Thus, at one end of the scale, it can be difficult to distinguish between societies with little corruption and those with a lot of it but whose authorities ignore it; and, at the other extreme, among societies with more corruption, it can be difficult to distinguish between those with the best-organized anti-corruption efforts and those where elite factions routinely use corruption charges as political weapons against each other. Is a surge in arrests good news, reflecting vigorous, successful investigation, or is it bad news, signalling a rise in corruption? Statistical modelling, whether of the hybrid type, incorporating perception data, or of the hard-data variety, is the strongest in methodological terms. But it is difficult for non-specialists to interpret and understand, and in many cases, it yields not so much a clear-cut indication of corruption trends as a more subtle account of how corruption fits into a complex context. From an analytic standpoint that is a clear plus; however, an anti-corruption agency seeking to demonstrate its effectiveness will need other sorts of evidence.

Playing the ball, not the man

The most useful approach to measurement for agencies seeking to assess and demonstrate corruption trends is to track changes in

aspects of governance that create incentives for corruption, or reveal its effects or do both (Klitgaard, Maclean-Abaroa and Parris 2000, chap. 4). Consider, for example, three such indicators: first, how long it takes for some routine government action, such as providing a passport, customs clearance or a licence; second, how much it costs government to provide a common service, such as a school meal, or to provide fuel for vehicles driving a certain number of miles; and third, the percentage of the population believing bribes must be paid to get officials in an agency to do their jobs. Where bribery or extortion are common, officials would be expected to create delays and additional "requirements", inspections and paperwork in order to maximize their income, while private clients would presumably be more tempted to pay "speed money". If officials and vendors engage in kickback schemes and "skim" their budgets in the course of providing meals, those services will cost more than they do in other jurisdictions or in the private sector. Moreover, inflated prices will attract the attention of unscrupulous bidders and officials, while driving the efficient vendor elsewhere. Third, the expectation that one must pay for specific services, or will be confronted with such demands (as distinct from more general perceptions of how corrupt a given country, province or city is overall), is both shaped by past experience with officialdom and influences the likelihood of corrupt payments in future encounters. These indicators reflect the impact of corruption (in these instances, delays, material costs and loss of trust in officials) and identify important incentives to engage in corruption or cover it up (official foot-dragging to extract bribes or clients' incentives to pay "speed money"); the extra income to be had by colluding with corrupt officials; and the popular expectation that bribes must be paid and (indirectly) that officials who demand payments will get them.

Indicators such as these (and others suggested below) should be gathered and published on a regular basis, with an emphasis on short- and long-term trends. Where such statistics and their importance are carefully and repeatedly explained, they can give political leaders, civil society groups and citizens generally an easily understood set of benchmarks about the quality of governance and likely trends in corruption. These indicators could be merged into an aggregate "quality-of-government index", which could become a major focus for all groups concerned with corruption and could offer opportunities for political and administrative leaders to claim public credit for improvements—always a major incentive for reform. Other uses are possible as well: trends in various kinds of indicators can be compared with each other, to identify short-term credibility problems. If, for example, bureaucratic delays are falling, but the public thinks corruption is becoming more common, the good news should be given more extensive publicity, while popular perceptions should be studied in greater depth. If, as in the well-known case of Bangalore's local government "report cards" (Paul 1995; Klitgaard, Maclean-Abaroa and Parris 2000, pp. 61 and 110), the gathering, publication and discussion of these indicators are made part

of broader efforts to increase accountability and citizen participation in government, the effectiveness of the assessments will be magnified.

At a basic level, this sort of monitoring is an administrative reform and capacity-building project in its own right, one that allows an anti-corruption agency and the political leadership that backs it to do several things. Most of the methodological dilemmas and allegations of bias involved in measuring corruption are avoided and assessments can be based upon widely acceptable indicators that are not partisan or ideological in nature. The emphasis is placed upon improvements in governance and public services that people can understand and that can be verified in everyday experience. The enhancements in data-gathering and monitoring required to put together such indicators will, by themselves, help make it more difficult to engage in and conceal corruption. In addition, such an approach broadens the base of responsibility both for the overall quality of governance and for the specific anti-corruption agenda: agency heads can be held more clearly accountable for the performance of their agencies and reform becomes a broadly shared function rather than the job of the anti-corruption agency itself. Such pressures will also affect elected officials, but in ways that make the anti-corruption agency less vulnerable to allegations of partisan or personal bias: the focus, after all, remains upon the kinds of services that both political and bureaucratic officials are pledged to provide, and for which they can take real political credit when successful.

Unlike data on arrests and convictions, governance indicators make it possible to distinguish the good news from the bad: if people are getting basic services more quickly, reliably and with fewer official hassles, if the costs of basic services are more clearly in line with those in jurisdictions elsewhere or with private provision, or both, and if people increasingly think that they will be treated fairly, instead of being confronted with demands for bribes, those are unambiguously good things. Better yet, such indicators can become credible in ways that corruption statistics themselves are unlikely to be and perceptions can be checked against other sorts of indicators with ease. Outside auditors should be used on a regular basis to verify data and to prevent inflated statistical claims; comparisons with neighbouring jurisdictions also aid in such quality control.

This strategy for assessing and comparing levels of corruption is not without its drawbacks. It assumes levels of leadership, institutional capacity and accountability that will not exist in the worst cases and that will be unevenly distributed through a government in many more. Similarly, a relatively free press and civil society are as essential to this strategy of assessment as they are to reform in general; where they do not exist, there are fewer incentives to gather such indicators and fewer ways to put them to effective use. These sorts of assessments do not generate “corruption data” as such, nor do they apportion, in any rigorous way, the credit or blame for trends among the many possible political, administrative, economic and social

influences on the quality of governance. The sorts of indices proposed in the present article will never be a substitute for the careful, in-depth analysis of actual corrupt processes and the settings within which they take place, nor will they be sufficient by themselves to compel fundamental reform. But they are not meant to be so; anti-corruption agencies will still need to develop and maintain sophisticated policy and analytical capabilities. (On the other hand, credible evidence of progress towards improved governance can only help reform agencies attract the people, political support and resources that they will need to deepen their institutional capacities.) There are kinds of corruption that this approach will not handle well: political or electoral corruption will need their own indices, for example, and international or high-level "grand corruption" will need to be analysed on a case-by-case basis. Still, these are ways to demonstrate the value of reform efforts in credible terms, to broaden the base of shared responsibility for reform and to retain a focus on the kinds of costs and incentives that make corruption such a significant and difficult problem to begin with.

So far, a case has been made for a particular strategy of assessment and a few simple examples have been proposed. In the section below, possible indicators and data sources are examined in greater detail.

A range of indicators

The costs of and incentives to engage in corrupt dealings can be assessed in a variety of ways. Most of those proposed in the present section are indirect measures of underlying problems, that is, they will not yield a precise assessment of the monetary costs of corruption in a given jurisdiction in a given period, much less a precise count of instances of corruption. Moreover, like any measures, they involve error and, as they will often be gathered from agencies with histories of corruption and be used in anti-corruption efforts, there may be incentives to engage in distortion or outright falsification of data. On the plus side, however, many of these measures can be externally verified (an anti-corruption agency seeking to measure delays can interview people who have applied for building permits, for example, or submit licence applications of its own). Others may depend upon independent surveys of households and businesses; while survey data may also involve error, sound methodology should enable the scope of corruption to be estimated. Thus, no one measure will give conclusive evidence of the extent and trends of corruption, but carefully examining a range of measures can yield a reliable assessment of a phenomenon that is, after all, varied in form, embedded in its context and usually kept secret.

The following table sets out some possible indicators and data sources for various costs or incentives associated with corruption:

Cost or incentive associated with corruption	*Possible indicator*	*Source of data*
Time, delay	Speed of routine processes such as:	Agency records
	Obtaining a building permit	"Test cases"
	Payment of invoices	Household/user surveys
	Obtaining a licence or passport	Business enterprise surveys
	Routine street repairs	
	Number of steps involved in processes:	
	Administrative handling of files	
	Inspections, negotiations	
	Autonomy/accountability of those administering major steps	Past corruption cases
Monetary costs	To government:	Agency records
	Cost of routine, comparable services	"Test cases"
	Trends in agency staffing	
	To citizens, businesses:	Household/user surveys
	Demands for major bribes	Business enterprise surveys
	Cost of routine, comparable services	
	Number, predictability of inspections	
	Speed of delivery/performance of services, inspections	"Test cases"
	Demands for/effectiveness of "speed money"	Survey of public officials
Preferential services and enforcement	Distribution of services, enforcement among segments of jurisdiction	Agency records
	Speed of service delivery to segments of jurisdiction	Household/user surveys
	Service/enforcement requests not drawing response	Business enterprise surveys
Distrust of political and bureaucratic officials	Expectations of demands for payment	Household/user surveys
	Expectations regarding effects of payments	Business enterprise surveys
	Expectations regarding speed, fairness of agency functions	Public opinion surveys
	Expectations regarding possible recourse	Agency report cards

The table does not by any means list all the possible indicators or types of agencies and services that might be included in governance assessments, but it is meant to suggest that a relatively limited number of data-gathering initiatives can shed light on many of the core incentives and costs of administrative corruption, in addition to yielding results that can be cross-checked against each other for reliability. Agency reporting is a common theme across most of the table; in cases of intense corrup-

tion, poor or deceptive record-keeping is a part of the problem to be solved. But anti-corruption agencies must attack that sort of problem sooner or later, and doing so as part of a continuing corruption-assessment process creates strong incentives for agencies to upgrade their record-keeping on a lasting basis. As noted above, it can also intensify accountability pressures from elected officials, the press and the public and can give effective agency managers an opportunity to claim credit for both improved transparency and better service. "Test cases" allow an anti-corruption agency to cross-check agency data in many instances: working with private parties, the agency can submit and track applications, bids, reports of needed services and the like and develop its own independent database on agency performance. Where corruption and mismanagement are particularly severe problems, test cases can be used as a free-standing strategy, but in the long run they will work best as a counterpart to efforts within government to improve such assessments and make them public.

Past corruption cases are also a database in their own right. They can be analysed to identify officials or parts of agencies where Klitgaard's (1988) well-known combination of monopoly, discretion and weak accountability encourage or protect corruption. It may be, for example, that officials in charge of some of the key administrative steps in a process have each set themselves up as "gatekeepers" capable of holding up cases until bribes are paid or, worse yet, are working together in coordinated corruption schemes (Shleifer and Vishny 1993; Johnston 1998). Even where such cases have resulted in the punishment or dismissal of officials, the opportunities or incentives to corruption may remain substantial in strategic parts of an agency. At the very least, those parts of agencies and processes will bear particularly close monitoring as part of the corruption assessment process; more important, they should also be dismantled, merged or subjected to enhanced accountability requirements as part of an overhaul of the basic administrative process itself. Many such bottlenecks may have been contrived with the sole purpose of extracting payments; doing away with them will do little to harm the administrative function in question and may do much to enhance it, producing improvements that can be verified using other measures suggested above.

Finally, major emphasis should be placed upon repeated surveys and continuing "report card" projects, through which the public and businesses can be involved in the corruption assessment process. Such surveys must be carefully devised, however, to justify their expense and to put their results into a useful perspective. For example, the survey of public officials should enhance understanding of institution-specific determinants of corruption (bribery, nepotism, political interference, embezzlement etc.), discretionality or informality, performance and governance. The results from the survey inform the policy dialogue on the links between governance and poverty alleviation, social sector outcomes and political or cultural values and differences. The business

enterprise survey examines the business environment, with special emphasis on the effects of public sector governance and corruption on private sector development. The situation of the firm as a user of public services, a client for licences and permits and the target of regulations is examined in this survey. The household/user survey examines the citizens' experiences with and perceptions of corruption in the public and private sectors. Citizens are surveyed as users of public services, clients for licences and permits and the targets of regulations. Special attention is devoted to social services such as health care or education.

The targets of these surveys, like the focus of the other indicators, are corruption costs and incentives, and they emphasize past experiences and present expectations, rather than more general perceptions of greater or lesser levels of corruption. Have people and firms had to pay bribes or deal with corrupt demands? Do police come when called and are street repairs actually carried out? How much time has it taken to obtain services, at what cost, and with how many bureaucratic encounters (forms to complete, additional "requirements" and inspections, time spent in negotiations)? How likely do people think it is that a police officer, customs agent, housing bureaucrat, doctor or inspector would ask for a bribe now? Can people like oneself or businesses like one's own count on fair treatment from specific agencies and officials? And perhaps most important, how do people respond to corruption: by complaining or filing a report, by avoiding the agency or the activity in question, by using corrupt influence of their own, or just by paying up (Alam 1995)? Not only do such data offer important information and cross-checks against other indicators, but the very process of gathering and publishing them sends important signals to citizens and civil society groups that anti-corruption agencies take them and their experiences seriously.

Once in hand, these indicators may be aggregated into a "governance index", indicating overall baselines and trends in the quality of governance and the progress of reform efforts. Such indices will help anti-corruption agencies demonstrate their effectiveness, both to the officials whose political and budgetary support are critical and to the press, public and civil society. Over time, they can help change public expectations and, with them, some of the incentives and restraints affecting officials: citizens who no longer see corruption as inevitable and intractable may be more resistant to paying bribes or putting up with administrative harassment and more willing to report new cases. Any reform agency will have to pay careful attention to public opinion; all must avoid the temptation to let that aspect of their work become superficial and self-serving. The well-known case of the Independent Commission against Corruption of the Hong Kong Special Administrative Region of China has shown how important long-term public education efforts can be, particularly when backed up by credible evidence that corruption can be controlled and that citizen reports are taken seriously.

Conclusion

The corruption assessment approaches suggested above will be effective only if they are integrated into broad-based and sustained law enforcement, training and public education efforts. While they are an important way to gauge the progress of and to build public and official backing for those core strategies, they are no substitute for them. Moreover, some kinds of corruption will not fit as well as others into the approaches suggested above: political and electoral corruption (in the financing of campaigns, in dealings between parties and voters and on election day), high-level "grand corruption" and many forms of international corruption will be much more difficult to assess. It must also be remembered that gathering and disseminating such indicators will be much more difficult where corruption is entrenched and enjoys top-level protection (or where it is linked to violence) and where the press and civil society are weak or intimidated. Even in the best of settings, surveys will be expensive and agencies may be reluctant to gather and report data, the targets of investigations and officials whose indicators have not improved will cry foul and the process of winning credibility for anti-corruption efforts and information will be a slow one.

Still, a focus on the quality of governance, rather than upon attempts to measure corruption itself, is a way to avoid a variety of methodological problems that anti-corruption agencies by themselves will never be able to solve. It is a way to broaden the base of responsibility for reform, to intensify pressures for accountability (and opportunities to claim credit for success), to make clearer the full scale of costs flowing from corrupt dealings and to involve citizens in the process of controlling corruption and demanding good government. It does not treat corruption as an isolated problem to be dealt with by a specialized agency, but rather as a problem deeply rooted in complex political, administrative and social contexts, sustained and protected by lasting and sizeable incentives instead of growing out of human fallibility alone. Perhaps most important, the approach proposed above emphasizes the reasons why corruption is worth worrying about in the first place and can help to dispel the feeling that nothing can be done about it.

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Can aid agencies really help combat corruption?*

By Brian Cooksey[1]

Abstract

Aid agencies help combat corruption in countries with support for "good governance" (referring to elements such as pluralism, judicial reform and anti-corruption agencies); the market economy (demonstrated by practices such as privatization, liberalization and deregulation) and civil society (including civil society organizations, non-governmental organizations and the media). Corruption is viewed as a process of individual "rent-seeking" that can be reduced, even eliminated, by changing incentive structures, including better salaries for officials, enhanced public access to information and more competition for markets and customers. Political corruption, in which public resources are diverted for purposes of patronage and cronyism rather than for personal accumulation, is not a phenomenon aid agencies can address directly without getting embroiled in local politics. Yet if the political dimension of corruption is not addressed, it is difficult to see how the implementation of largely technical solutions to corruption can have a lasting impact. The present article focuses on the nature of corruption facing the aid industry, current steps by aid agencies to deal with corruption and preconditions for a systematic approach to addressing the question of corruption in aid. The main focus is sub-Saharan Africa.

Defining corruption in aid

There are three possible forms of corruption[2] in aid: unilateral misuse of funds on the part of the donor; misuse of funds on the part of the

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[2]Corruption for the purposes of the present article is defined as the misuse of public position for personal and/or political gain.

recipient; and collusion between the two sides. Of those three, the second is the most common. In general, bilateral agencies harbour the least internal corruption. As a rule of thumb, the extent of corruption in donor country politics and the quality of public accountability in national life determine the degree of corruption in bilateral aid. Some donor countries have a unique profile in this context: official financial and political support has helped promote national commercial interest, rather than addressing the needs of recipient countries.[3]

Lack of transparency and accountability, in particular in the multilateral agencies, the European Union and the United Nations system, present particular obstacles to efforts at corruption control. Over the years, a number of United Nations entities have suffered from cronyism and corruption.[4] Corruption and cronyism in the European Commission, climaxing in the resignation of the entire Commission, demonstrate how agencies may find it difficult to practise what they preach in their development ideology, namely, good governance, transparency and integrity.

After a devastating report on its lending performance in over 1,500 projects worth 28 billion United States dollars, the Abidjan-based African Development Bank was substantially restructured and its board of directors replaced (Knox 1994).[5]

Aid for emergency relief and humanitarian purposes is particularly vulnerable to corruption. Food aid, too, is open to systematic abuse by officials and the private sector. Given present trends in the incidence of civil disorder and natural catastrophes in Africa, it is likely that such forms of aid will increase in importance in years to come.

Corruption among aid recipients[6]

The most common form of corruption with respect to aid is the unilateral misuse of funds by recipients, ranging from widespread petty corruption to grand corruption and looting. As with donors, corruption among aid recipients reflects the degree of transparency and accountability in public affairs. Aid lends itself to the politics of patronage. Patronage, a common feature of politics in Africa, does not necessarily imply corruption. In practice, however, the dividing line is not easily identified. For example, a

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[3]For an analysis of the case of France and "la Francophonie", see Bayart, Ellis and Hibon (1999); for an analysis of the case of Italy in the 1980s, see Lancaster (1999).

[4]"Corruption in the United Nations is considered widespread and many of its agencies are, if anything, less open to scrutiny than the [World] Bank" (George and Sabelli (1994, p. 122)).

[5]"The hardest task will be to instil a new culture, which will include fundamental changes in [...] govenance" (Knox 1994, p. 34). The African Development Fund of the African Development Bank gives soft loans to the poorest countries of Africa. From 1990 to 1996, the African Development Fund accounted for 8 per cent of all multilateral loans to Africa. The quality of lending was considered extremely poor (Knox cited in Cooksey (1999b)).

[6]Chabal and Daloz (1999) describe how patronage relations have influenced the manner in which aid has been used, and misused, in Africa. Bayart and others (1999) ask to what extent the countries of Africa have been effectively criminalized, rather than simply corrupted, but the role of foreign aid (if any) in the criminalization process is not explored.

senior government official may use influence to have his or her home district chosen as a pilot for a project to co-finance a local education development fund. Such an exercise may be used to strengthen relations with local elites, including politicians, bureaucrats and businessmen, as well as to impress the local population. There may or may not be a concerted effort subsequently to misuse project funds or opportunities. The important point is that aid, in the form of project loans in particular, creates many opportunities for patronage, including project location, hiring project staff, training opportunities, procurement and purchases, and consultancy. In the process, covenants and conditions for loans may be systematically ignored or flaunted.

Furthermore, corruption and patronage should be distinguished from bureaucratic waste, which characterizes much project and other aid. Bureaucratic waste is the use of aid resources for legal but unnecessary or non-productive purposes. For example, projects often involve vehicles and civil works, computers and other office equipment and a battery of training activities, study tours, and workshops or seminars of dubious utility. Technical assistance and consultancy inputs—both of which make up large components of aid—often fall into the latter category. Though analytically distinct, corruption, patronage and bureaucratic waste are usually found together, feeding off and reinforcing one another in a systematic fashion. Patronage, corruption and waste slow down and distort project implementation and help explain the poor performance of most loan-financed projects in countries in Africa (Cooksey 1999b, appendix 1).

The extent of official misuse of aid is not easily assessed since those managing the process are generally protected from public scrutiny. The phenomenal amount of unexplained and irregular government expenditure reported by auditors general of countries in eastern Africa both recurrent and capital budgets, gives an impression of the extent of the problem (Chabal and Daloz 1999, chap. 8). Even where aid money is not directly misappropriated, the conceptual "fungibility" of aid means that any misuse of government revenue implicates aid in proportion to aid's overall contribution to government revenues. Since aid accounts for about 90 per cent of public investment and 30 per cent of recurrent expenditure in a typical country in sub-Saharan Africa, the implications of the misuse of government spending on aid are substantial.

Most vulnerable to local corruption are loans from the international finance institutions and regional development banks for projects implemented by Governments and sectoral ministries. That is the most crucial area for assessing the impact of corruption in aid, since the international finance institutions account for a growing proportion of total aid flows—and external debt—to Africa. Projects funded by the World Bank are frequently put in place through project implementation units based in central ministries. Such units are staffed by officials who may have to demonstrate allegiance to their hierarchical and political superiors. At the implementation phase, the imperatives of corruption, patronage and bureaucratic waste can easily take over from the formal project objectives, design and management in determining project outcomes.

Beneficiaries from corruption in aid-funded projects include the private contractors and procurement agents, both local and expatriate, who are awarded contracts through suspect tendering arrangements. Contacts from within the system provide intelligence on opportunities. The best-placed businesses are politically well connected and may help fund the ruling party's electoral coffers from income from aid-related contracts. In that way, aid money helps keep ruling the elite in power.[7] Donor-funded projects, for example, loans to youth groups or women for income generation activities, are routinely manipulated by incumbent or aspiring politicians.[8]

Corruption is found throughout the project cycle. Corruption may be involved in selecting the consultants who appraise, implement, evaluate or review a project and may allow projects to be used for illicit activities during implementation. Procurement contracts may be awarded to relatives and cronies, and project funds earmarked for particular purposes may be directed elsewhere.

The most pernicious form of corruption in aid concerns loans for essentially bogus projects involving collusion between agency and government officials. Agriculture, livestock and irrigation are favourite targets for such projects, though multisectoral projects are also found. That form of corruption takes place in projects that are typically located in remote regions, where the ostensible target group of beneficiaries is unlikely to complain that no benefits are forthcoming. Such projects are by definition impervious to public scrutiny.

Overfunding can encourage corruption by providing more aid than governments can effectively absorb. Sectoral overfunding may reflect a donor tendency to jump into "flavour-of-the-month" activities without considering their combined or aggregate impact. Recent examples include democratization and governance, including anti-corruption initiatives, small-scale credit and support for non-governmental organizations. Competing for relatively small markets forces donors to ignore warning signs of lack of capacity, quality or integrity among recipients.[9]

Joseph Warioba, Chairman of the 1996 Presidential Commission of Enquiry against Corruption of the United Republic of Tanzania, makes a strong case for tracing the source of corruption in aid to the aid agencies themselves (Warioba 1998). Warioba argues that aid to some countries "from bilateral donors and IFIs consists of very large amounts of money and the sum that disappears through corruption is also very large". Warioba singles out aid for infrastructure projects and tied aid, giving the example of a road project funded by a bilateral donor in which the contractor had the support of the local development mission, despite its poor

[7]Competitive politics, by reducing the job security of incumbent politicians, has arguably increased the vulnerability of aid to such corruption in recent years.

[8]Since such projects often contain a participatory component, some of the costs involved are borne by the intended beneficiaries.

[9]Despite growing support for the private sector and civil society organizations, central government is still the major beneficiary of overfunding.

performance. The pervasiveness of aid means that any corruption related to implementing particular government policies usually involves aid money. Warioba relates examples of corruption in the privatization process and in contracting a dubious foreign firm to collect debts from a defunct government bank. The debts collected were less than the fees received.

The aid industry's response to the corruption challenge

Having identified corruption, albeit belatedly, as a basic constraint on economic growth and social development, the aid industry has proceeded to sponsor a wide range of activities promoting improved state and private sector governance. Most Governments of countries in Africa are implementing donor-funded governance programmes covering anti-corruption, democratization, rule of law and support for civil society, including non-governmental organizations. Economic reforms are intended to level the economic playing field, eliminate unnecessary regulation and encourage investment and growth.

In addition, despite the recent rhetoric of partnership, all major donors still attach formal conditionalities to their aid, including respect for human rights, anti-corruption measures, gender equality, protection of the environment, democratization and liberalization. Such conditionalities are intended to send the message to governments receiving aid that they need to change their ways in order to qualify for further development assistance.[10] Conditionalities have rarely been effective in forcing compliance to structural adjustment policies (Panday 2000). Leaders of some countries in Africa have been known to swallow their pride, take the aid and proceed more or less as usual, lacking either the will or the capacity (or both) to implement agreed policies. Chabal and Daloz (1999) suggest that "donors ... seem on the whole to have accepted a degree of non-compliance with the stated aims of aid and a level of failure of targeted aid projects which beggar belief. ... African ruling elites were able to use foreign aid primarily as an additional source of clientelistic revenue."

The "disbursement culture" of the "[World] Bank makes it difficult to place anti-corruption concerns into the mainstream in projects funded by the World Bank. External audits routinely fail to pick up or follow up evidence of corruption. One report on Uganda found that "[World] Bank employees have complained that projects are indifferently audited, or, even where audits reveal diversions, that there are no substantial consequences for diversion because the internal institutional incentives of the Bank spur lending." (Thomas and Barkan 1998, p. 27).[11] Project supervi-

[10]Wolfensohn (1999) warns Governments in developing countries that they will jeopardize their foreign assistance and investment by condoning corruption.

[11]Uganda is one of the few countries where corruption in projects funded by the World Bank has been both publicized and acted upon locally in the absence of external pressure.

sory functions of the World Bank are often inadequate to reveal or follow up effectively on instances of corruption, for example, in procurement.[12]

To be fair, the World Bank and other donors are often actively involved in challenging acts of bad governance, including corruption, among aid recipients. In extreme circumstances, aid donors may cancel projects or entire programmes for the same reasons. Though aid recipients obviously resent interference in local politics, donors are sometimes the principal source of critical opposition to instances of grand corruption.[13] At the same time, donors are often reluctant to "blow the whistle" on corruption, even where it undermines their own programmes. Some donors may deny well-founded reports of major misuse of resources in activities that they fund, even when they are not directly implicated in any wrong-doing.

Since the International Monetary Fund does not lend money for projects, its concern with the impact of corruption on its lending programmes remains at a more general level. After much criticism of its willingness to fund corrupt regimes in the past, there are signs that the International Monetary Fund, like the World Bank, is beginning to take corruption more seriously. Kenya, where an Enhanced Structural Adjustment Facility loan was suspended in 1997, is a case in point.[14]

Whether combating corruption should be used by aid agencies as a conditionality is a complex issue, further complicated by current initiatives, known as the Heavily Indebted Poor Countries Debt Initiatives, that link debt relief to transparent and externally monitored poverty reduction programmes by the beneficiaries of debt relief. For the moment, the actual amounts of relief forthcoming under such a debt initiative are so small that they hardly constitute a major material incentive to relief-seeking governments (Mutume 2001, p. 26). The issue of writing off "odious debts" resulting from previous badly designed and implemented projects has been peripheral to the debt initiative debate, which has focused on the past failures of the borrowers, not the lenders.

Furthermore, aid agencies have started to improve their own practices, including better staff supervision and stricter rules and penalties. In the late 1990s, the World Bank began to publish the names of procurement companies and contractors involved in malpractice, banning them from further bidding on projects financed by the World Bank. Enhanced internal controls have also unearthed maverick staff. According to Singh (1998, p. 8), "it is generally accepted that [such measures] are beginning to have a significant deterrent effect in curbing corruption in [...] operations" financed by the World Bank.[15]

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[12]According to Singh (1998, p. 5), World Bank audits of procurement tend to focus excessively on processes: much more needs to be done on the quality of the physical work undertaken, by independent consultants where the World Bank lacks the technical staff required. This could have a large immediate impact on reducing the losses of corrupt and fraudulent practices.

[13]As a result of aid dependency, donors feel they have a responsibility to oppose instances of grand corruption unless, of course, they are involved themselves.

[14]However, many including bilateral donors, find the International Monetary Fund's subsequent keenness to recommence lending to Kenya too hasty (Githongo 2000).

[15]This seems optimistic.

In many cases, anti-corruption exercises have led to mistrust, low morale among staff, the possibility of the development of other forms of corruption, unnecessary bureaucracy and new avoidance mechanisms. Anechiarico (1999) describes how anti-corruption initiatives have failed in public administration in the United States of America.[16]

The zero tolerance option adopted by the World Bank has had all those predictable effects. Competitive bidding has been used for contracts worth just a few thousand dollars. Donors introduce procedures in order to remove the least suspicion of malpractice, succeeding in slowing down project implementation and frustrating the honest actors along with the rest. Existing onerous bureaucratic procedures become even more onerous. The costs involved in appearing squeaky clean are not counted, since aid is not organized around principles of efficiency or competition. Both aid workers and recipients resent the assumption that they are guilty until proven innocent.

The "islands of integrity" approach championed by the Global Coalition for Africa and Transparency International, which aims to clean up on procurement and tendering in major projects, addresses a very real and urgent issue. That worthwhile initiative[17] must be linked to a more general view of aid-related corruption along the lines described in the present article. That would allow the inclusion of projects and non-project loans where international procurement is not a central feature.

Some options for tracking corruption in aid

Before anything can be done to address corruption in aid, the problem needs to be fully defined. For that to happen, corruption must be conceptualized in systemic rather than individualistic terms. It is also important to try to delineate the relationship between corruption as a factor undermining aid and other factors working in the same direction. In practice, the proposition is problematic since so many factors are involved.

For both aid agencies and recipients, addressing corruption in aid requires evidence of the nature and scope of the problem, a broad commitment to solve it and a strategy to address it. Aid agencies need to realize that their own long-term legitimacy and (perhaps) survival require a radical revision in their mode of operation. That means exposing their own integrity systems to the same rigours of transparency and accountability as are expected from their development partners.

To help mainstream anti-corruption initiatives, moral leadership should be sought from within the donor community,[18] the major foundations and

[16]Zero tolerance is the approach of the Government of the United States to drug trafficking. Yet half the corruption cases brought against police officers between 1993 and 1997 were drug-related. Escalating public spending over 20 years coincides with a significant improvement in the quality and fall in the price of drugs (Drug Policy Alliance 2000).

[17]"Islands of Integrity" or no bribery pledges are not viewed favourably by many World Bank procurement experts.

[18]The Norwegian Agency for Development Cooperation (known as NORAD) has taken such a lead, with support from a number of bilateral agencies. The real problem, however, lies with the multilaterals.

non-governmental organizations that focus on development issues, the research and consultancy industries, the private sector, associations of aid workers and political parties.

Compiling an annual donor corruption index to complement the corruption perception index and bribery perception index as developed by Transparency International would be a promising measure (Fjeldstad 1999). The corruption perception index has had a dramatic impact on public discussions of corruption. The criticism that it is unfair in concentrating on the bribe-takers has now been addressed by ranking bribe-givers. In the same way, an aid corruption index would rank both recipient countries and agencies on their propensity to corruption. The question that remains, however, is who would compile such an index and defend its findings.

The pressures on academic and research organizations to earn their keep from contractual work allows donors to define research and consultancy priorities in ways that primarily serve their own interests. Academics from countries in Africa suffer from the same constraints.[19] Establishing a standing committee in the Development Assistance Committee of the Organisation for Economic Cooperation and Development to monitor corruption in aid, for example, would be a useful measure. The committee would refer grievous cases of corruption in aid agencies to international legal process and adjudication, with appropriate sanctions.

There is often opposition from Governments of countries in Africa to attempts to raise the issue of corruption in aid, including aid-funded projects. Outside South Africa, the number of non-governmental organizations from Africa and grass-roots community-based organizations with the capacity to take up the issue of aid transparency is limited. The national chapters of Transparency International could take up the issue of corruption in aid should they be convinced that the issue merits their attention. The difficulty is that Transparency International chapters rely on donors for their core funding and other activities; thus, there might be reluctance to bite the hand that feeds them.

The preventive measures that may be of value are:

- All proposed aid projects above a certain value, and all programmes, should be the subject of public discussion, including wide review by parliament, the business community and civil society organizations of all kinds;
- Public expenditure reviews should include greater disclosure of aid inputs and the rationale for public investment choices;
- Regular publication of details of donor-funded projects and public access to data on aid and debt.

[19]Failure to raise the corruption issue weakens otherwise authoritative writing on aid to Africa. For example, van de Walle and Johnston (1996, p. 76) devote one sentence to corruption whereas Riley (1998), writing on the political economy of anti-corruption stategies in Africa, including reference to the World Bank, fails to consider aid as a potential incentive to corruption. In a major study of aid to Africa, Lancaster (1999) devotes only three pages to corruption in Governments of countries in Africa, but discusses how aid from Italy to countries in Africa in the 1980s was undermined by corruption.

Research on corruption in aid can be included in integrity system and service delivery surveys. Such surveys document public opinion and the experience of corruption, including the impact of the latter on the availability, cost and quality of public services. Such surveys are already part of the battery of public service reform tools aimed at improving the performance of central and local governments. National integrity system research could include the issue of corruption in aid and constitute a possible source of the above-mentioned donor corruption index.

From the public's perspective, civil society and the private sector need to be involved in carrying out the surveys, whereas governments and donors see them as part of civil service reform, and therefore under government control. Surveys that investigate service quality and the role of aid, but are controlled by central or local government, are unlikely to be carried out objectively, since the real picture would predictably show up the poor performance of both governments and donors. It is also unlikely that donors would get away with funding independent and potentially shocking research for very long. Finding credible local researchers prepared to risk the consequences of being involved in such activities is problematic, for the reasons discussed above. The involvement of outside researchers and consultants could lead to the research being branded as a foreign plot designed to discredit the government.

For some time, the World Bank has been sponsoring workshops on investigative journalism[20] national integrity and other anti-corruption activities. A round of workshops on investigative journalism could be run on the theme of corruption in aid. Corruption in aid should figure in integrity workshops. There would be major risks to investigative journalists, editors and newspaper editors. "Whistle-blowers" also risk their lives if they start telling the truth about certain types of aid.

The following measures may be effective:

- Establishment of parliamentary committees empowered to review aid performance with powers to question senior officials on aid-funded projects and programmes (sessions should be held in public);
- Unannounced value for money audits of any loan-funded project by an official auditor or consultants;
- Systematic assessments of the impact on the environment, the economy and poverty levels of aid programmes and projects in all sectors.

The last two measures are information-empowerment measures, giving all stakeholders the means to take an intelligent position on the impact of aid.

[20]Critics claim the constraints on investigative journalism in Africa—low salaries, threats to journalists and editors from repressive governments, self-censorship by media owners—undermine the usefulness of such training.

Conclusion

The mechanisms for identifying and dealing with corruption in aid-recipient relations are not difficult to identify. What appears to be currently lacking is the will to assimilate the lessons of the past in order to introduce reforms on the part of donors. That poses particular challenges for the international financial institutions. Given the unique position of the World Bank in defining the terms of the development debate, including corruption, it is worth asking whether a more fundamental critique of corruption can be invoked in the interest of good sense and in the search for practical solutions.[21]

The aid industry, led by the World Bank, tends to define corruption found in some countries in Africa as a local issue that can be addressed by supporting diverse initiatives of a largely technical nature. It is also assumed that corruption is a largely individual process of rent-seeking that can be addressed by changing incentive structures, including wages, accountability and competition.

Thus, if corruption were to be viewed as a systemic political phenomenon, derived from complex patronage structures, aid agencies would have to ask who their local anti-corruption allies might be in any given context. It is not enough for a head of state to adopt a formally anti-corruption stance: that may be done just to placate donors. If aid agencies and their local partners have diametrically different definitions of the situation, it is difficult to see how the implementation of largely technical solutions to corruption can have a lasting impact.

It is a common, though unjustified, criticism of aid to countries in Africa that it has had no impact despite large transfers over a protracted period. The impact of aid has grown in direct proportion to the rise of aid dependency. Corruption as rent-seeking and political patronage have been major contributors to personal accumulation among ruling elites and political strategies to protect or advance their collective interests. The story of the major role played by aid in those two processes has yet to be written.

Finally, as to whether aid agencies really contribute to the fight against corruption (the question posed in the title of the present article), the short answer is no. Some agencies lack transparency and accountability in their own operations. Their anti-corruption policies should be judged accordingly. Furthermore, the degree of tolerance among some agencies for the misuse of donor funds by recipient governments is unacceptable. It is easy to conclude that the donors' propensity to overlook corruption is directly proportionate to their need to lend or grant money. In that sense, there is a virtual conspiracy of silence between aid givers and takers that defines the aid relationship. Ending such a conspiracy would be a precondition for aid agencies to develop a comparative advantage in confronting corruption.

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[21]The omens are not good. For example, the Wapenhams Report (1992) led the World Bank to assert that "only sound, on-the-ground results—the development impact of projects—are true measures of the Bank's contribution to sustainable development", quoted by George and Sabelli (1994, pp. 225-226). Consequently, the World Bank initiated a process for assessing the impact of social sector loans, covering only 13 per cent of World Bank lending.

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Strengthening judicial integrity and capacity through an integrated approach

By Petter Langseth[1]

Abstract

A lack of integrity or even active corruption within criminal justice institutions mandated to enforce and safeguard the rule of law is particularly alarming and destructive to society. It is a troubling fact that in many countries it is precisely those institutions that are perceived as corrupt.[2] This sort of corruption has severe social effects and directly undermines the legitimacy of the state and democracy itself.

The present article presents:

(a) The recommendations of the Judicial Group on Strengthening Judicial Integrity on how to apply the integrated approach to strengthen judicial integrity and capacity;

(b) A country example showing how this integrated approach can be applied to strengthen judicial integrity in courts in Nigeria;

(c) The findings from a survey of 33 chief judges in Nigeria on challenges facing their judiciary and the measurable performance indicators they identified to monitor their progress;

(d) The lessons learned so far in applying the integrated approach in a number of pilot countries.

Introduction

Perhaps the most significant achievement in governance during the 1990s has been the shattering of a taboo that shrouded corruption, in particular corruption in the judiciary, from discussion, especially in diplomatic circles and intergovernmental institutions. The topic is now out in the open and a potentially powerful coalition has emerged: interest groups that have never collaborated previously in preventing corruption now recognize that Governments alone cannot hope to contain corruption (Pope 2000).

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[1]Programme Manager, Global Programme against Corruption.

[2]World Bank surveys conducted in Bolivia, Nicaragua, Uganda, Ukraine and the United Republic of Tanzania revealed that, in dealings with the criminal justice system, 50 per cent of people had faced corruption in the courts and up to 60 per cent had faced corruption dealing with the police.

There is increasing consensus that the elimination of corruption is not merely desirable as an element of sustainable development strategies, but that it is actually a necessary condition for promoting and achieving the international ideals of free markets, democracy, the rule of law and broad prosperity. Its elimination requires measures to combat corruption and promote integrity not only in the legislative, executive and judiciary, but also in the private sector.

Corruption distorts economic decision-making, deters investment, undermines competitiveness and ultimately weakens economic growth. It also erodes critical functions with respect to the development of public policy, the democratic selection of Governments and policies, the delivery of effective public services and the development and application of rule-of-law structures.

There is evidence that the social, legal, political and economic aspects of development are linked and that corruption in any one sector therefore impedes development in all of them.

Where corruption is tacitly accepted as a means of doing business, efforts to improve legal and regulatory frameworks and to establish integrity across public and private sector functions are unlikely to succeed. Moreover, where public and private sector structures such as the rule of law and transparency of proceedings fail to protect and treat fairly the various stakeholders, corruption may flourish.

The support and participation of an active, but independent, civil society must be attained. Governments must allow new safeguards and controls to be established. Such safeguards and controls include the following:

- Effective rule-of-law structures, including a professional, unbiased and independent judiciary;
- Broader, easier and more timely public access to information;
- A legislature which formulates policy and creates laws in the public interest and which provides a suitable role model for other institutions;
- A strong civil society empowered by free, clean and independent mass media;
- Increased checks and balances.

Key emerging principles for dealing with corruption

In a broader sense, efforts to combat corruption have also led to a better understanding of the nature of corruption as a social and economic phenomenon.

The key principles which seem to be emerging include the following:

- Economic growth alone is not enough to reduce poverty; a broader, integrated and holistic strategy for change, of which anti-corruption efforts are only one part, is needed;

- Curbing systemic corruption is a challenge that will require stronger measures, more resources and a longer time frame than most politicians and other persons fighting corruption will admit or can afford;
- Where personal risks, uncertainties and punishments are minimal, deterrence is lacking and corruption tends to increase;
- Corruption tends to concentrate wealth, increase gaps between wealthy and impoverished population groups and provide the wealthy with illicit means to protect their positions and interests; this, in turn, can contribute to social conditions that foster other forms of crime, social and political instability, and, in extreme cases, terrorism and other major problems;
- Raising public awareness is an element of most anti-corruption strategies, but it must be accompanied by other measures which address, and are seen to address, corruption; without such other measures, the increased awareness can lead to widespread cynicism and the loss of hope that corruption can be beaten; in some cases, this may actually contribute to further increases in corruption;
- Without proper vigilance and effective countermeasures, corruption can occur anywhere: recent corruption cases exposed in the World Bank, the United Nations and other multilateral and bilateral organizations have shown that any society or organization is susceptible, even where there are well-laid checks and balances;
- Those systems which have excessive individual discretion, discretion-structuring rules that are overly complex or that lack structures that effectively monitor the exercise of discretion and hold decision makers accountable tend to be more susceptible to corruption than those which do not;
- Systems in which individual offices, departments or agencies operate in isolation from one another tend to be more susceptible to corruption; one reason for this is that, in systems in which individual elements operate in a coordinated fashion and in regular communication with one another, each individual unit tends to monitor the activities of the other units and individuals with which it deals;
- Those systems whose operations are transparent are less susceptible to corruption than those which operate in secrecy; the transparency created by such elements as access to information policies and the activities of a healthy independent mass media is a powerful instrument for identifying and exposing corruption and holding those responsible legally and politically accountable, as well as for educating the public and instilling high expectations of integrity;

- Public trust in government, anti-corruption agencies and anti-corruption policies and measures is key when a country invites the public to take an active role in monitoring the performance of its Government.[3]

Requirements for anti-corruption strategies

Lessons learned from countries where anti-corruption programmes have been pilot-tested suggest that the key to reducing poverty is an approach to development that addresses quality growth, environmental issues, education, health and good public sector governance. The element of governance includes, if not low levels of corruption, then the willingness to develop and apply effective anti-corruption strategies. It has been argued that development strategies must be inclusive, comprehensive, integrated, evidence-based, non-partisan, transparent and impact-oriented (Langseth 2000) and the same is true for anti-corruption strategies at the national level and for narrower areas such as the criminal justice system or even the judiciary. The key elements of an integrated approach are given below.

Inclusion of stakeholders

Including as broad a range of participants or stakeholders as possible raises the expectations of all those involved and increases the likelihood of successful reform. This is true not only for senior officials, politicians and other policy makers, but also for the general public. Bringing victims of corruption into the development and monitoring of anti-corruption strategy empowers them by providing them with a voice and reinforcing the value of their opinions. It also demonstrates that they will have an effect on policy-making and gives a greater sense of "ownership" of the policies that are developed. In societies where corruption is endemic, it is those individuals who are most often affected by corruption who are most likely to be in a position to take action against it, both in their everyday lives and by supporting political movements against it.[4]

The establishment of strategic partnerships has also proved to be valuable, both in bringing key stakeholders into the process and developing direct relationships where they will be most effective against specific forms of corruption or in implementing specific strategy elements.

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[3]For example, according to a 1999 community opinion survey, 99 per cent of the population in the Hong Kong Special Administrative Region (SAR) of China said that they supported the Independent Commission against Corruption, 66 per cent of the population said they were willing to file a complaint or "blow the whistle" on a corrupt official or colleague and 75 per cent of those people said they were willing also to identify themselves when reporting suspected corruption (Lai 2000).

[4]For example, in the Hong Kong SAR, the Independent Commission against Corruption has conducted workshops involving almost 1 per cent of the population each year for over 25 years. That gives those consulted input, allows policy makers to gather information and generally raises popular awareness of the problem of corruption and what individuals can do about it.

Examples include strategic partnerships between non-governmental organizations and international aid institutions, such as the partnership between the World Bank and Transparency International or that between Amnesty International and the Government of the United States of America in Latin America, which have increased awareness of anti-corruption efforts at the national and international levels.

Comprehensive strategies

While the need for integration is manifest, the means of achieving it in practice are not as straightforward and are likely to vary from country to country. Strategies should be comprehensive and multidisciplinary, addressing all the factors that facilitate or contribute to corruption and all the possible options for measures against it. Strategies should also be integrated, in the sense that, once identified, all of the elements of an anti-corruption strategy must be developed and implemented in mutually consistent and reinforcing ways, avoiding conflicts or inconsistencies. A major requirement is the need for the broadest possible participation in identifying problems, developing strategies and strategic elements and for effective communication between those involved once the process of implementation begins. Broad participation in identifying needs can assist in identifying patterns or similarities in different social sectors that might be addressed using the same approach. Broad participation in developing strategies ensures that the scope of each element is clearly defined and the responsibility for implementing it clearly established; it also ensures that each participant is aware of what all the others are doing and what problems they are likely to encounter.[5] Plans to develop legislation, for example, should also give rise to plans to ensure that law enforcement and prosecutors are prepared to enforce the laws and that they have the expertise and resources to do so when they are needed. Such conditions would ensure that laws are not just enacted, but also enforced through appropriate implementation mechanisms. Effective communication between the participants (through regular meetings, for example) can then ensure that elements of the strategy are implemented consistently and on a coordinated schedule and that any unforeseen problems that may arise during the process can be dealt with.

Transparency

Transparency in government is widely viewed as a necessary condition both for effective control of corruption and, more generally, for good governance. Populations should have the right to know about the activities of their Government so as to ensure that public opinion and decision-making (for example, in elections) are well-informed. Social-control mechanisms involving the operational participation of prestigious civil society

[5]United Nations pilot projects have successfully used national integrity system workshops for this purpose.

representatives do usually serve that purpose. For example, social-control boards monitoring court-related activities have reduced perceptions of occurrences of bribery by 59 per cent over a period of two years in Costa Rica, while police commissions including members of civil society have reduced perceptions of corruption by 78 per cent in San Jose, California, in the United States (Buscaglia 2000).

Such information and understanding are also essential to public "ownership" of policies that are developed. That is as true for anti-corruption policies as it is for any other area of public policy. Lack of transparency with respect to anti-corruption strategies is likely to result in public ignorance, when in fact broad enthusiasm and participation are needed. It can also lead to a loss of credibility and the perception that the programmes involved are corrupt or that they do not address elements of government that may have succeeded in avoiding or opting out of any safeguards. In societies where corruption is endemic, this will generally be assumed, effectively creating a presumption against anti-corruption programmes that can only be rebutted by their being clearly free of corruption and by publicly demonstrating that fact. Where transparency does not exist, moreover, popular suspicions may well be justified.

Non-partisan anti-corruption efforts

The fight against corruption will generally be a long-term effort and is likely to span successive political administrations in most countries. This makes it critical that anti-corruption efforts remain politically neutral, both in their goals and in the way they are administered. Regardless of which political party or group is in power, reducing corruption and improving the delivery of services to the public should always be a priority. To the extent that anti-corruption efforts cannot be made politically neutral, it is important for transparency and information about the true nature and consequences of corruption to be major factors in any anti-corruption strategy because they generally operate to ensure that corruption is seen as a negative factor in domestic politics.

Multi-party support for anti-corruption efforts is also important because of the relationship between competition and corruption. The bright side of competition has been thoroughly researched by economists. There is also a dark side of competition that has not received similar attention, however. Just as competition in the private sector can sometimes lead companies to resort to bribery to gain advantages in seeking business, competition between political factions can also sometimes lead participants to resort to political corruption in order to obtain or maintain advantages or to offset real or perceived advantages on the part of other factions. Common problems in this area include the staffing of public service positions with political supporters to reward them and ensure further support and to influence areas of public administration in their favour. The existence of regulatory control coupled with social control mechanisms can diminish the occurrence of such competition-related corruption.

Evidence-based strategies

It is important for strategies to be based on concrete and valid (measurable) evidence at all stages, including preliminary assessments of the extent (types, levels, location, cost and causes) of corruption in order to establish clear baselines and whether or not objectives have been achieved. In countries where corruption is endemic, the external gathering or validation of such evidence is often seen as an important factor in the credibility of anti-corruption policies. The Global Programme against Corruption has established a comprehensive country assessment to assist in that process, where such assistance is requested. This includes a review of all available information about relevant factors to establish data as a baseline for future comparison and an initial qualitative and quantitative assessment of the forms and general extent of corruption.

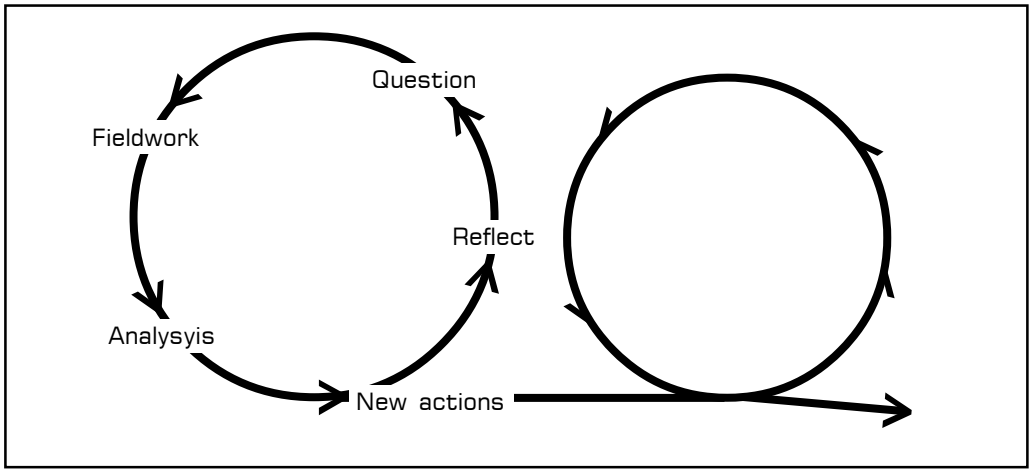
Sources of information may vary, but generally include opinion surveys, interviews with relevant individuals such as officials or staff of companies that deal with the Government, focus group discussions about the problem of corruption and aspects of the problem or measures against it that may be unique to the country involved, the preparation of case studies, an assessment of anti-corruption laws and the agencies that are intended to monitor, prevent or prosecute corruption cases, or both, and assessments of other key institutions. More general assessment of strengths and weaknesses in civil society, national culture or other areas, which may be important in the development of a successful and effective anti-corruption strategy, is also critical. Many factors will vary from country to country, which makes it important for comprehensive country assessments to be custom-tailored to each country and much of the actual design to be conceived domestically.

It is important for the process of gathering and assessing evidence to be seen as an ongoing one, and not as a one-time event. One term used to describe this is “action research”, which has been described as embracing “principles of participation and reflection, and empowerment and emancipation of groups seeking to improve their social situation” (Seymour-Rolls and Hughes 1995). A great deal of literature exists outlining and reviewing the concept of “action learning” (as well as “action research” or “action planning”). Common among most is the concept of creating dialogue among different groups to promote change through a cycle of evaluation, action and further evaluation, an iterative process illustrated in figure I.

Within the framework of the Global Programme against Corruption, the action-learning method is applied both in testing new approaches and in disseminating the lessons learned from the pilot projects and experiences elsewhere. The Programme was set up in response to the need to provide assistance to Governments seeking to reduce corruption and build integrity.

Specifically, the Centre for International Crime Prevention, through its Global Programme against Corruption, facilitates and assists client countries in their attempts to build integrity to fight corruption in the criminal justice system, with a special focus on the judiciary. This strategic focus was selected because without integrity, accountability or independence in

Figure I. Action learning: a cyclical research process



Source: Wadsworth, Yoland (1998), "What is participatory action research?" *Action Research International,* paper No. 2, November. Available online at <http://www.scu.edu.au/schools/sawd/ari/ari-wadsworth.html> (accessed 23 July 2002).

the courts it is impossible to curb corruption. Another reason why the Centre selected integrity in the judiciary as its key focus was that few had focused on that critical aspect of the criminal justice system. In fostering collaborative efforts among all stakeholders in the judiciary and the rest of the criminal justice system in a given society, the Centre is helping to determine shared goals, purpose and measurable performance indicators using national and local integrity and action-planning workshops. Those goals are identified through a variety of instruments, including comprehensive assessments of corruption, national integrity system workshops, national and local integrity strategies and anti-corruption action plans addressing preventive measures and measures for institutional development, awareness-raising and law enforcement, to be implemented and monitored to improve performance against broad objectives. Each of those instruments is predicated upon broad-based participation, both to maximize the local "ownership" and to increase the objectivity and relevance of the reform.

It is essential that clear and realistic goals be set and that all participants in the national strategy be aware of those goals and the status of progress made in achieving them. The complexity of the corruption problem and the difficulty in gathering valid baseline and progress data make this difficult, but it is nonetheless critical. Initial evidence is used to provide the basis for comparison and to set initial goals, while periodic assessments of what has been accomplished are used to monitor progress, identify areas that may need more attention or a different approach and to support ongoing revision of the initial goals of the programme. Validated evidence can also play an important role in reforms in other areas. Evidence that corruption is being reduced supports confidence in national economies, for example, and evidence of the nature and consequences of political corruption will lend support to democratization and similar political reforms.

Impact orientation

In Nigeria, the objectives of the chief judges were to improve access to justice, the timeliness and quality of the trial process, and the efficiency and effectiveness of the handling of public complaints or public trust in the courts, or both. Validated evidence of improved performance against these objectives can also play an important role in reforms in other areas. Evidence that corruption in the courts has been reduced and measurable improvements have been made in the four areas above supports confidence in the judiciary and the courts, for example, and evidence of the nature and consequences of judicial corruption will lend support to reforms in the broader criminal justice system.

National anti-corruption strategies involve long-term and wide-ranging policies, and it is essential that planning and philosophy make allowances for periodic monitoring and assessment and for adjustments based on those assessments (Office for Drug Control and Crime Prevention, forthcoming, chap. VII). The need for such adjustments should not be seen as evidence of failure: changes are as likely to be triggered by elements that are more successful than expected or that succeed in unexpected ways as by the need to rethink elements that have fallen short of the desired or predicted results. Adjustments may also be triggered or advised by outside information or changes in external circumstances, such as successes achieved in other countries or the development of international agreements or instruments.

Consistent with this approach, the project on strengthening judicial integrity in Nigeria involves a series of different actors at the international, national and subnational levels, including the judiciary at the federal and State levels,[5] key representatives from other parts of the criminal justice system, the Judicial Group on Strengthening Judicial Integrity, the Independent Corrupt Practices and Other Related Offences Commission of Nigeria, the victims of corruption, the private sector including the Bar Association, the media, non-governmental organizations and the international donor community.

An integrated approach to strengthen judicial integrity and capacity

Judicial group on strengthening judicial integrity

In the firm belief that a process to develop the concept of judicial integrity, independence and accountability should be led not by politicians or public officials but by the judges themselves, the Centre for International Crime Prevention, in collaboration with Transparency International, invited a group of chief justices and high-level judges to a preparatory meeting held

in Vienna in April 2000 to consider formulating a programme to strengthen judicial integrity.[6]

The Judicial Group was formed exclusively of chief justices or senior judges from eight African and Asian common-law countries in Africa and Asia: Bangladesh, India (the state of Karnataka), Nepal, Nigeria, South Africa, Sri Lanka, Uganda and the United Republic of Tanzania. The objective of the programme was to launch an action-learning process at the international level, during which the chief justices involved would identify possible anti-corruption policies and measures for adoption in their own jurisdiction, test them out at the national level, share their experiences in subsequent meetings at the international level, refine the approach and, if a positive impact had been made, trigger its adoption by their colleagues.

The following issues were discussed by the Judicial Group:

- The public perception of the judicial system;
- Indicators of corruption in the judicial system;
- The causes of corruption in the judicial system;
- Means of developing a concept of judicial accountability;
- Remedial action;
- Designing a process to develop plans of action at the national level.

Public perceptions versus objective indicators of corruption within the judicial domain

With regard to the causes of judicial corruption or the perception of judicial corruption, the participating chief justices concluded that they were not only fuelled by first-hand experiences of judges or court staff asking for bribes, but also by a series of circumstances that were all too easily interpreted as being caused by corrupt behaviour rather than a simple lack of professional skills and a coherent organization and administration of justice. Such indicators included episodes such as delays in

[6]The preparatory meeting, held in Vienna on 15 and 16 April 2000 under the framework of the Global Programme against Corruption and in conjunction with the tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, was attended by the following: M. L. Uwais, Chief Justice of Nigeria; Pius Langa, Vice-President of the Constitutional Court of South Africa; F. L. Nyalali, former Chief Justice of the United Republic of Tanzania; B. J. Odoki, Chairman of the Judicial Service Commission; Bhaskar Rao, Chief Justice of the State of Karnataka in India; Latifur Rahman, Chief Justice of Bangladesh; and Govind Bahadur Shrestha, Chief Justice of Nepal. The meeting was chaired by Christopher Weeramantry, former Vice-President of the International Court of Justice, and facilitated by Giuseppe di Gennaro, former Judge of the Italian High Court, and Dato Param Cumaraswamy, the Special Rapporteur on the independence of judges and lawyers. The Rapporteur was Michael Kirby, Judge of the High Court of Australia.

executing court orders; the unjustified issuing of summonses and granting of bail; prisoners not being brought to court; lack of public access to records of court proceedings; files disappearing; unusual variations in sentencing; delays in delivering and giving reasons for judgement; high acquittal rates; apparent conflict of interest; prejudices for or against a party, witness, or lawyer, whether individually or as a member of an ethnic, religious, social, gender or sexual group; immediate family members of a judge regularly appearing in court; prolonged service in a particular judicial station; high rates of decisions in favour of the executive; appointments perceived as resulting from political patronage; preferential or hostile treatment by the executive or legislature; frequent socializing with particular members of the legal profession, the executive or the legislature, with litigants or potential litigants; and post-retirement placements.

However, the chief justices agreed that the current knowledge of judicial corruption was not sufficient for remedies to be found. They all agreed that there was a need for more evidence about the types, causes, levels and impact of corruption. Even in those countries where surveys had been conducted, the results were not sufficiently specific. Generic questions about the levels of corruption in the courts do not reveal the precise location of the corruption and will therefore be easily rejected by the judiciary as grounds for the formulation of adequate countermeasures and policies. They agreed that there was a strong need to develop a detailed survey instrument that would allow the identification not only of the levels, but also of the types, causes and location of corruption. They were convinced that the perception of judicial corruption was to a large extent caused by malpractice within the other legal professions. For example, experiences in some countries show that court staff or lawyers pretend to have been asked for the payment of a bribe by a judge in order to enrich themselves. Surveys in the past did not sufficiently differentiate between the various branches and levels of the court. Such an approach inevitably had to lead to a highly distorted picture of judicial corruption, since the majority of contacts with the judiciary were restricted to the lower courts. In addition, the survey instruments used seem not to have taken into account that the perception of corruption might be strongly influenced by the outcome of a court case. Generally speaking, the losing party is far more likely to put the blame for its defeat on the other party bribing the judge, in particular when its lawyer tries to cover up his own shortcomings.

Finally, the techniques for assessing judicial corruption were reviewed. One criticism was that surveys often relied solely on perceptions, while more objective indicators such as a lack of consistency or coherence in judicial rulings and judgements were seldom assessed. Another was that service delivery surveys were too often based solely on the perceptions or experiences of court users rather than insiders such as prosecutors, investigative judges and police officers, from whom information could easily be obtained by conducting interviews. The existing instruments also seldom try to further refine the information obtained in the survey by having the data discussed in focus groups, by conducting case studies on those institutions which seem to be particularly susceptible to corruption or by doing both.

Preconditions and measures to curb judicial corruption

The Judicial Group agreed that a set of preconditions had to be put in place before concrete measures to fight judicial corruption could be established. Most of them were directly connected to the status and the esteem of the judicial profession. The recommendations included (Office for Drug Control and Crime Prevention 2000):

(a) Preconditions for judicial integrity:

(i) *Improved remuneration*. The low salaries paid to judicial officers and court staff in many countries should be improved and, where it exists, the traditional system of paying "tips" to court staff responsible for filing documents should be abolished;

(ii) *Monitoring*. An institution independent of the judiciary should be established in every jurisdiction for the purpose of handling complaints of corruption involving judicial officers and court staff. It should include serving and former judges and should have a broad mandate. Where appropriate, it should be included in a body more generally responsible for judicial appointments and education and empowered to remove from office those against whom complaints are upheld;

(iii) *Judicial appointments*. More transparent procedures are needed to combat corruption or the perception of it in judicial appointments (including nepotism or politicization) and to question candidates about allegations or suspicions of past involvement in corruption;

(iv) *Code of conduct*. A judicial code of conduct should be adopted and newly appointed judicial officers should be given instruction on it. Its provisions should be made known to the public in order to provide a yardstick by which to judge the conduct of judicial officers;

(v) *Adherence to the code of conduct*. Newly appointed judicial officers should be required to subscribe to the judicial code of conduct and to agree to resign from judicial or related office if it is proved that they have seriously breached it;

(vi) *Timely delivery of decisions*. Publicly available standards for the timely delivery of judicial decisions should be included in the code of conduct and adopted in practical administration, and appropriate mechanisms to ensure that they are observed should be established;

(vii) *Transparent case-assignment procedure*. A transparent, publicly known and, if possible, random procedure for the assignment of cases to particular judicial officers should be adopted in order to combat litigant control or the perception of it over the decision maker;

(viii) *Sentencing guidelines*. Consideration should be given to adopting sentencing guidelines or some other means of clearly identifying

criminal sentences and other decisions that are so exceptional as to give rise to reasonable suspicions of partiality;

(ix) *Caseload*. Thought should be given to developing means of reducing the excessive caseload of individual judicial officers and maintaining job satisfaction within the judiciary;

(x) *Public relations*. The work of the judiciary and its importance, in particular the importance of maintaining high standards of integrity, should be clearly explained to the public, for example, through initiatives such as a national law day or week;

(xi) *Strengthened civil society*. It should be recognized that, as the judiciary operates within the society of the nation it serves, it is essential to adopt every available means of strengthening the civil society of each country in order to ensure public vigilance against judicial corruption. In order to combat departures from integrity and to address the systemic causes of corruption, it is essential to have in place the means of monitoring and auditing judicial performance and the handling of complaints about departures from high standards of integrity in the judiciary;

(b) Initiatives within the judiciary:

(i) *Plan of action*. A national plan of action to combat corruption in the judiciary should be adopted;

(ii) *Participation of the judiciary*. The judiciary should be involved in the drafting of the plan of action;

(iii) *Seminars on ethical issues*. Workshops and seminars on ethical issues should be organized for the judiciary in order to combat corruption within the judiciary and heighten vigilance by the judiciary;

(iv) *Computerization of records*. Practical measures such as the computerization of court files should be adopted in order to prevent court files from becoming lost and to avoid a situation in which court officers demand "fees" for their retrieval or substitution. Modern technology should be utilized by the judiciary to improve efficiency and redress corruption;

(v) *Litigant access to court officials*. Systems for providing direct access by litigants to court officials should be implemented to enable litigants to receive advice concerning the status of their cases awaiting hearing;

(vi) *Peer pressure*. Opportunities for peer pressure to be brought to bear on judicial officers should be enhanced in order to help maintain high standards of probity within the judiciary;

(vii) *Declaration of assets*. Judicial officers should be required to make a public declaration of their assets and those of their parents, spouses, children and other close family members. The declarations should be verified upon the appointment of the judicial

officer, regularly updated and periodically monitored by an independent and respected official;

(viii) *Judges' associations*. Associations of judges and equivalent bodies should participate in the establishment of standards for the integrity of the judiciary and in ruling on best practices and reporting on the handling of complaints against errant judicial officers and court staff;

(ix) *Reassignment of judges*. In order to avoid the appearance of partiality, internal procedures should be adopted within court systems, as appropriate, to ensure the regular reassignment of judges to different districts, having regard to appropriate factors such as gender, race, tribe, religion and the minority affiliation of judicial officers;

(x) *Law of bias*. Judicial officers, during their induction and thereafter, should be regularly given instruction on binding decisions concerning the law of judicial bias (actual and apparent) and the judicial obligation to disqualify oneself for actual or perceived partiality;

(xi) *Judges' journals*. A journal aimed at a readership of judges should, if it does not already exist, be established and should contain practical information on the foregoing topics relating to enhancing the integrity of the judiciary;

(c) Initiatives outside the judiciary:

(i) *Role of the media*. The role of the independent media as a vigilant and informed guardian of integrity in the judiciary should be recognized, enhanced and strengthened by the support of the judiciary;

(ii) *Media liaison*. Courts should be given the means to appoint media liaison officers to explain to the public the importance of integrity within the judicial system, the procedures available for the registering of complaints and the investigation of corruption and the results of any such investigations. The officers would help to avoid misunderstandings of the judicial role and function such as can occur, for example, in a case involving an ex parte proceeding;

(iii) *Inspectorate*. An inspectorate or equivalent independent supervisory body should be established and mandated to visit all judicial districts regularly in order to inspect and report upon any systems or procedures that carry a risk of lowering or appearing to lower standards of probity. Such a body should also be mandated to report on complaints of corruption or the perception of corruption within the judiciary;

(iv) *National training centres*. National training centres should be established for the education and training of officers involved in inspecting courts in response to allegations of corruption. Such

training centres should include the participation of judicial officers themselves at every level so as to ensure that the inspectorate is aware of the functions and requirements of the judiciary, including the importance of respecting and maintaining judicial independence;

(v) *Alternative dispute resolution*. Systems of alternative dispute resolution should be developed and made available to ensure that a means of avoiding actual or suspected corruption exists in the judicial branch of government;

(vi) *Bar associations*. The role of bar associations and law societies in combating corruption in the judiciary should be acknowledged. Such bodies have an obligation to report to the appropriate authorities instances of corruption that are reasonably suspected. They also have an obligation to explain to clients and the public the principles and procedures for handling complaints against judicial officers. Such bodies also have a duty to institute effective means to discipline members of the legal profession who are alleged to have been engaged in corruption of the judicial branch;

(vii) *Disbarment*. In the event of allegations being made of the involvement in corruption relating to his or her professional duties of a member of the legal profession, whether a judicial officer or an officer of the court, appropriate means should be in place for the investigation and, if corruption is proved, disbarment of the person concerned;

(viii) *Trained prosecutors*. The role of public prosecutors in the investigation of allegations of judicial corruption should be acknowledged and appropriate training should be made available;

(ix) *Judicial administrators*. The role of judicial administrators in establishing systems that help to combat the possibility or appearance of judicial corruption should be acknowledged. Appropriate training for such administrators should be made available;

(x) *Stakeholder participation*. Procedures for the investigation of allegations of judicial corruption should be designed after consultation with judicial officers, court staff, the legal profession, users of the legal system and the general public. Appropriate provisions for due process in the investigation of a judicial officer should be established, bearing in mind the vulnerability of judicial officers to false and malicious allegations of corruption by disappointed litigants and others;

(xi) *Criminal law*. It should be acknowledged that, like other citizens, judges are subject to criminal law. They have, and should have, no immunity from obedience to general law. Where reasonable cause exists to warrant the investigation by the police or other public bodies of a judicial or court officer on suspicion of having committed criminal offences, it should be carried out according to normal practice, as prescribed by law.

Strengthening judicial integrity and capacity in Nigeria

As a direct consequence of this initiative at the international level to strengthen judicial integrity, the Chief Justice of Nigeria, with the support of the Centre for International Crime Prevention, launched a project aimed at improving the precarious situation of the rule of law in Nigeria caused by a lack of integrity and capacity within the justice system in general and the judiciary in particular. The project differs from past initiatives by donor agencies to assist in the reform of judiciaries in its strong commitment to maintaining and strengthening judicial independence and increasing the accountability of the judiciary. It is therefore crucial to note that the entire planning, implementation and monitoring process is owned and controlled by the judiciary itself, headed by the Chief Justice.

A recent study conducted by the Nigerian Institute for Advanced Legal Studies indicates a general lack of integrity within the Nigerian judiciary (Ayua and Guobadia 2001): 30 per cent of judges, 54.2 per cent of litigants and 50 per cent of lawyers held the view that there was corruption in the courts in Nigeria. It is the aim of the project to remedy this situation. Specifically, the project is designed to assist the Nigerian authorities in the development of sustainable capacities within the judiciary and to strengthen judicial integrity to contribute to the re-establishment of the rule of law in the country.

In the absence of in-depth knowledge of the current capacity and integrity levels within the judiciary and consequently of an evidence-based anti-corruption action plan for the judiciary, the project will focus on supporting the Nigerian judiciary in the action-planning process. The preconditions for evidence-based planning will be determined by conducting assessments of the capacity and integrity of the criminal justice system in three pilot states, which will include a desk review of all relevant information regarding corruption in the criminal justice system; face-to-face interviews with judges, lawyers and prosecutors; opinion surveys with court users; an assessment of the rules and regulations disciplining the behaviour of judges; a review of the institutional and organizational framework of the criminal justice system; and the conduct of focus groups.[7]

Based on the outcome of the assessment,[8] the Centre for International Crime Prevention will assist the judiciary at the federal level, in three states and nine courts in conducting integrity meetings to develop plans of action focusing on strengthening judicial integrity and capacity. Finally, the Centre will support the judiciaries, in close collaboration with

[7]The assessment of judicial integrity and capacity will be conducted following the recommendations made by the second meeting of chief justices on strengthening judicial integrity, held in the state of Karnataka, India, in February 2001.

[8]The comprehensive assessment, conducted by the Nigerian Institute for Advanced Legal Studies and the Centre for International Crime Prevention, was begun in February 2002. The reports were presented at three state integrity and action planning meetings in June 2002.

the Attorney-General's office and the Anti-Corruption Commission,[9] in launching the state-level action plans.

Though limited to the judiciary in its immediate scope, the project has taken on a wider perspective, aiming at the promotion of the integrity, efficiency and effectiveness of the entire criminal justice system. It will include an exhaustive assessment of the levels, causes, types, locations and effects of corruption within the judiciary and provide the basis for an integrated approach to change. At all stages of this process, particular attention will be given to the empowerment of the general public and court users through social control boards and other participatory channels.

The project will also focus on building strategic partnerships with institutions and branches of government and civil society. Consistent with the action-learning process that is generally applied by the Centre for International Crime Prevention, it will test various measures in nine courts in three states. The results will be collected, documented and disseminated. At the international level, the lessons learned will be analysed by the Judicial Group on Strengthening Judicial Integrity.

As a first step in the implementation of this initiative, a federal integrity meeting for Nigerian chief judges was held in October 2001. The meeting provided an excellent opportunity to assess the extent to which the recommendations made by the Judicial Group on Strengthening Judicial Integrity were relevant to the Nigerian context. The chief judges were invited to prioritize the recommendations of the Judicial Group as part of a participants' survey; the results are given below.

Results of the participants' survey

At the meeting, a survey consisting of five questions was handed out to the participants. Thirty-five of the 55 participants completed and submitted the questionnaire and 33 of the 38 chief judges, grand kalis (in the Shariah legal system, the equivalent of chief judges) and other senior judges who attended participated in the survey.

Key problem areas facing the judiciary

Question 1: How does each of the key problem areas identified by the Judicial Group on Strengthening Judicial Integrity rate as a priority for your state?

Of the 17 problem areas, the participants rated 5 top priorities. These were: court record management, judicial training, public confidence in the judiciary, judicial control over delays caused by litigants' lawyers and a merit-based system of judicial appointments (see table 1).

[9]The Chief Justice of Nigeria decided to invite the Attorney-General and the Chairman of the Anti-Corruption Commission to attend the first federal integrity meeting, held in October 2001. At that meeting, the Commission was requested to help the Chief Justice to monitor the performance of the courts.

Table 1. Key problem areas facing the judiciary

Problem areas	*Priority rating*	*Very low*	*Low*	*Medium*	*High*	*Very high*
Judicial training	1	—	—	11	11	77
Merit-based judicial appointments	2	—	3	14	14	69
Public confidence in the judiciary	3	—	3	12	24	62
Court record management	3	—	3	9	43	46
Credible and effective complaint system	5	—	9	17	20	54
Adequate and fair remuneration	6	3	11	14	11	60
Enforcement of the code of conduct	7	—	11	17	20	51
Increased judicial control over delays created by litigants' lawyers	8	—	—	15	50	35
Court delays	9	—	15	12	24	50
Case-assignment system	10	3	3	24	21	48
Case management	10	6	—	21	38	35
Abuses of procedural discretion	12	—	21	9	38	32
Generation of reliable court statistics	13	3	9	38	15	35
Caseload management	14	6	6	25	31	31
Abuses of substantive discretion	15	9	9	19	28	34
Sentencing guidelines	16	6	3	31	41	19
Communication with court users (e.g. court user committees)	17	6	24	32	29	9

Medium-level priority was given to the establishment of a credible and effective complaints system, the reduction of court delays in general, the enforcement of the code of conduct, the reduction of abuse of procedural discretion and an improved case-assignment system. Adequate and fair remuneration, one of the generally preferred reform recommendations of most judiciaries in developing countries and countries in transition, was, surprisingly, given only medium-level priority.

Relatively low priority was given to improved caseload management and the creation of reliable court statistics. The abuse of substantive discretion and the consequent necessity of sentencing guidelines were also not regarded as matters of urgency. Astonishingly, by far the lowest priority was given to improved communication with court users. There is some doubt as to whether the question was correctly understood by most of the respondents, since at the same time, increasing public confidence in the courts was seen as one of the top priorities.

Areas regarded by the participants as matters of high or very high priority

Question 2: Rank the levels of corruption within the criminal justice system outside your own court, by professional category.

It was foreseeable that the participants, coming mainly from the judicial domain, would most likely rank the judiciary as the least corrupt institu-

tion among those surveyed (see table 2). That might be attributable not only to an understandable urge to protect their own profession from misperception, but also to their having a deeper insight into their own domain. While estimates regarding the other professions are more likely to be based on perceptions, those concerning the judiciary presumably represent a realistic assessment of the situation.

Table 2. Perception of corruption within the criminal justice system, by professional category

	Perceived level of corruption			
Professional category	*Very low*	*Low*	*High*	*Very high*
Police	1	9	16	9
Prison personnel	8	18	7	9
Prosecutors	2	13	15	4
Court administrators	2	22	8	3
Lawyers	7	15	10	2
Judges	10	19	5	0

Surprising, however, was the relatively high perceived level of corruption among prosecutors, second only to the perceived levels of corruption among the police. The plenary discussion revealed that most respondents were referring to police prosecutors, rather than to those working for the office of the Attorney-General.

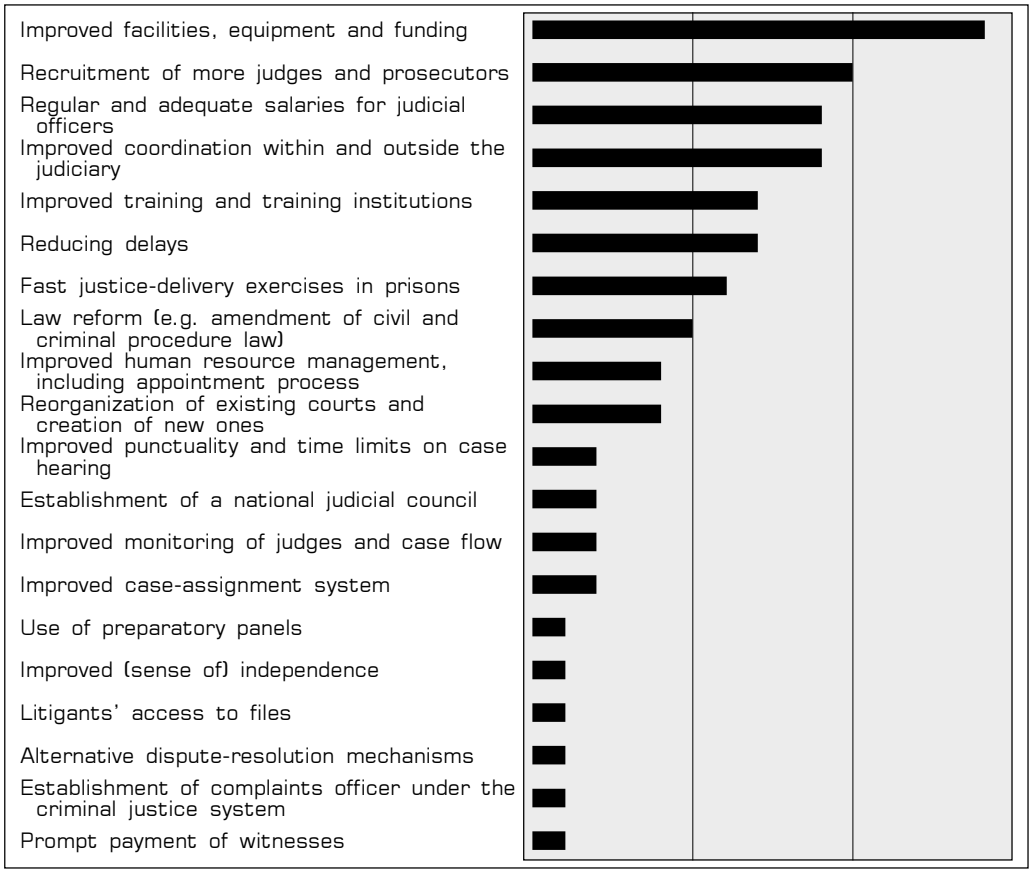
Most effective measures in the previous five years

> *Question 3: State the three most successful measures in the last five years that have been implemented in your state to increase the quality and timeliness of the delivery of justice.*

The answers given were extremely comprehensive (see figure II). It should be kept in mind that the establishment of the categories directly influences the number of counts. The ranking in figure II therefore gives only an indication of which measures produced the best results. For example, the improvement of facilities, equipment and funding was merged into one category, whereas the various delay-reducing measures were divided into several categories because the participants considered them to be of great importance.

The most effective measures that had been implemented in the course of the previous five years consisted in providing the criminal justice system with the very basics, such as funds, equipment, facilities and

Figure II. Most successful improvements in the delivery of justice in the previous five years



adequate remuneration. Those efforts which had been made to increase the integration of the criminal justice system were also rated as highly effective. Those initiatives seemed to have succeeded to some degree in bringing the judge out of his or her traditional isolation and to have contributed to a more effective use of resources and time within the criminal justice process.

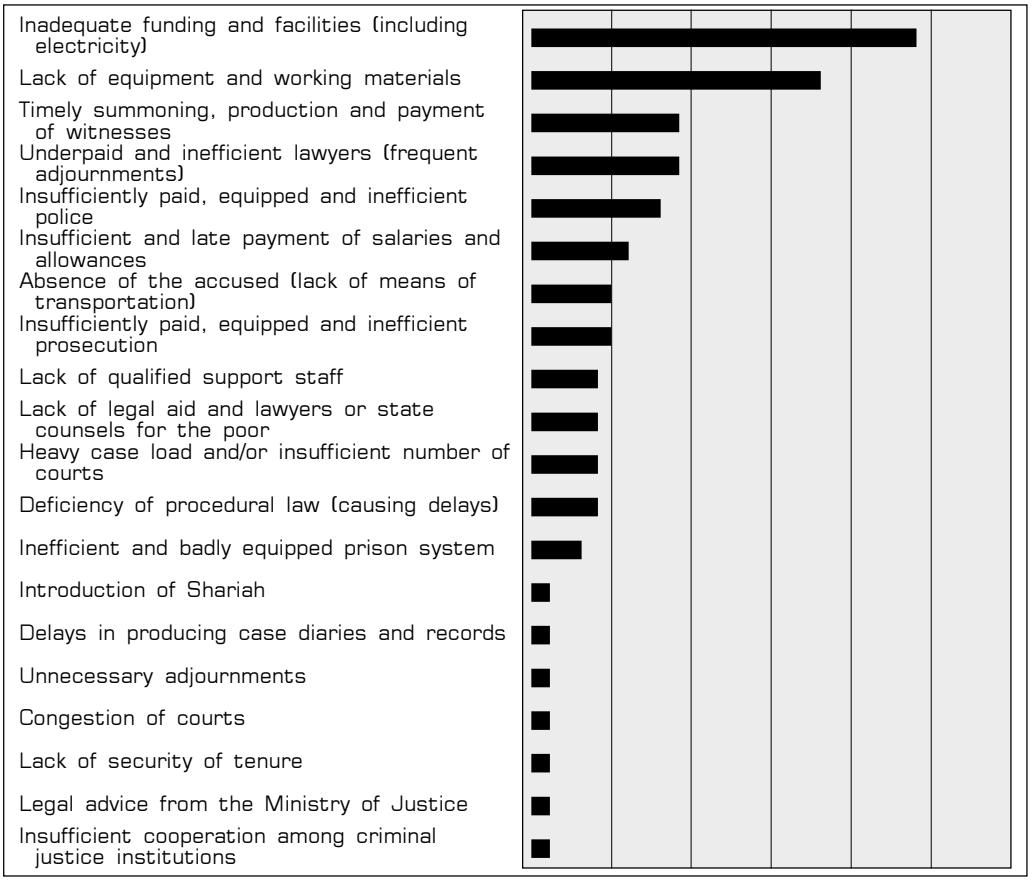
In general, efforts made to minimize the congestion of the courts were also deemed to have been quite effective. In that regard, particular emphasis was given to initiatives involving attempts to remedy the problem of prison overpopulation. Considered together, the measures concerning how business was done, in particular the organizational and management reforms, constituted by far the single most frequently mentioned reform.

Constraints in the delivery of justice

Question 4: State the three most important constraints faced in your state in the delivery of justice.

As the main constraints in the delivery of justice, the participants mentioned inadequate funding, equipment and facilities, as well as working materials such as law books and journals (see figure III). Not only was the increase in funding quoted as the single most effective measure implemented in the previous five years, but funding was also rated the biggest constraint that continued to hamper the effective delivery of justice. It seems that, despite the initial promising steps taken by the Government to upgrade the facilities and equipment of the courts, much remains to be done.

Figure III. Constraints in the delivery of justice



Another constraint mentioned was the lack of legal aid and the difficulties that poor litigants faced in finding a lawyer. In a country like Nigeria, where, according to cautious estimates, at least one third of the population lives below the poverty line, such a situation must have a devastating effect on the equality of citizens before the law.

Besides these problems, related mainly to scarce resources, many of the additional constraints find their root cause not within the judiciary itself, but in the other criminal justice institutions: lawyers, the police and, to a certain degree, also the prosecutorial domain create, according to the participants, a fair amount of obstacles to a smoothly functioning criminal justice process.

In particular, the backlog of cases, to a large extent due to continuous adjournments and delays at all stages of the criminal justice process, seems to have a serious impact on the efficiency of the courts. Files not produced on time, witnesses not turning up because their expenses are not reimbursed, badly prepared lawyers and prosecutors and the accused not being brought to court because of a lack of transportation are only some of the more frequently encountered problems.

General improvements needed outside the court system

> *Question 5: State what, in your opinion, are the three most important improvements needed in the criminal justice system outside the court system.*

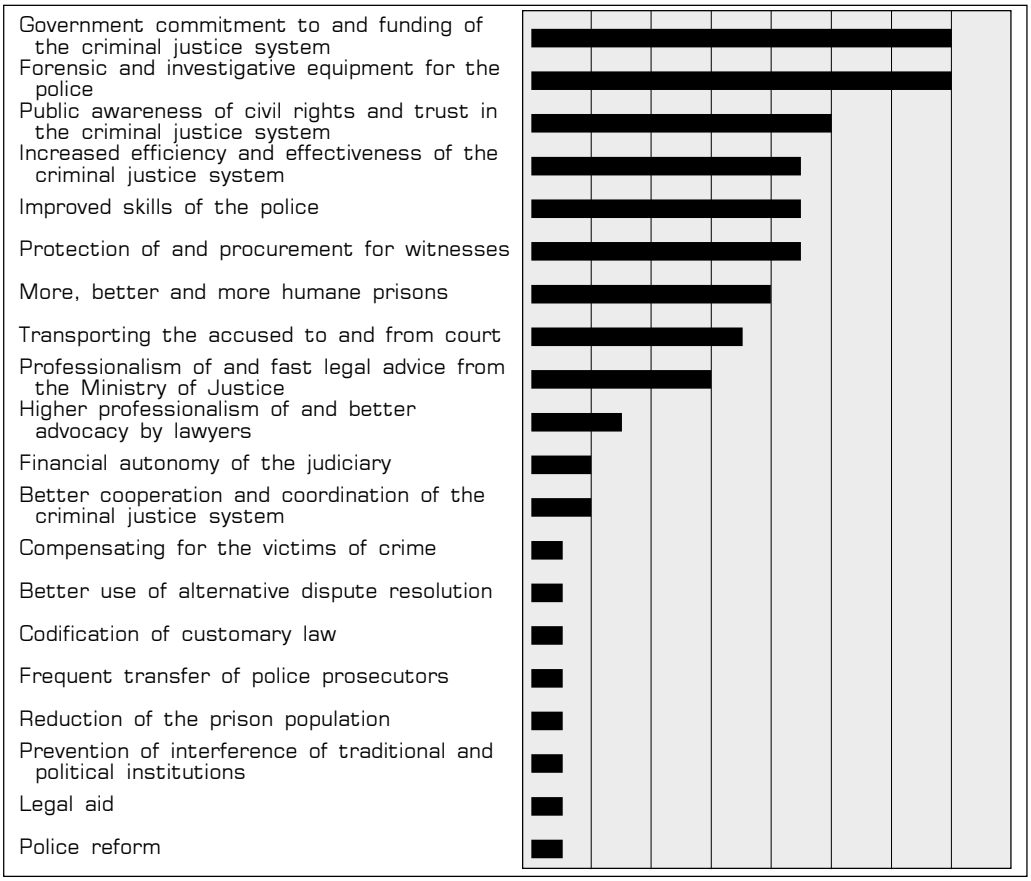
The answers given to question 5 differed quite significantly in scale and scope. Some were far-reaching, long-term improvements such as police reform and increased awareness of the general public regarding its civil rights and its understanding of and trust in the criminal justice system, while others included much more specific recommendations concerning the solution of immediate problems such as transporting the accused to court (see figure IV).

The wide range of answers given rendered categorization rather difficult. Some specific measures, though conceptually part of other, more far-reaching ones, were quoted separately because of the importance given to them. One example was the transportation of the accused to and from the courts, which also falls within the broader category of increasing and improving police equipment in general or even reorganizing the entire police force.

The police emerged as the single most-mentioned institution. Improvements needed included better training, improvement of investigative and forensic skills and equipment, and the establishment of a central database on crime. There seemed to be general agreement among all participants that the police was the most needy branch of the criminal justice system. Only if serious efforts are made to bring about the various improvements mentioned will the criminal justice system at large have a chance to become more efficient and effective.

Another institution repeatedly mentioned was the prison system. Many participants not only recommended the creation of new prisons and the upgrading of existing ones, but also insisted that detention should be rendered more humane. It was also mentioned that prison services should focus more on their rehabilitation function.

Figure IV. General improvements needed outside the court system



The handling of witnesses was another area identified. Most of the recommendations given dealt either with the prompt and adequate reimbursement of witnesses or with their protection.

These and other statements again confirmed that many of the most urgent improvements, in particular to increase the timeliness of the delivery of justice, were needed outside the courts and were closely linked to

the efficiency, effectiveness and integrity of the other stakeholders involved in the justice system, such as the police, the prisons, the Attorney-General's office and the lawyers. Any reform effort, therefore, should be comprehensive and should address the above-mentioned areas in parallel. This has to be kept in mind also within the context of the implementation of the project proposed here.

Based on the findings of the participants' survey, the federal integrity meeting for Nigerian chief judges defined and agreed upon the objectives of the project, which will be implemented over a 24-month period. In order to facilitate the planning process, the meeting was asked to identify concrete measures in the areas of *(a)* access to justice, *(b)* the quality of justice delivery, *(c)* the public's trust in the judiciary and *(d)* the effectiveness of the handling of complaints against judicial malpractice. That task also included the identification of impact indicators to establish the baseline against which progress could be monitored.

The chief judges developed an action plan with the following main elements:

Access to justice

Measure 1 *Implementation of a relevant and up-to-date code of conduct for judicial officers*
Indicator: Number of complaints received under the code of conduct

Measure 2 *Enhance the public's understanding of basic rights and obligations concerning court-related procedural matters*
Indicator: Availability of the judicial code of conduct to the public

Measure 3 *Ease of access of witnesses in civil/criminal procedural matters*
Indicator: Average time and expense for a witness to attend a case

Measure 4 *Affordable court fees*
Indicator: Percentage of fees set at too high a level

Measure 5 *Adequate physical facilities for witnesses attending court*
Indicator: Adequate waiting rooms for witnesses and litigants

Measure 6 *Itinerant judges with the capacity to adjudicate cases outside the court building, in distant rural areas*
Indicator: Number of itinerant judges

Measure 7 *Number of informed citizens (and court users in particular) informed about the nature, scale and scope of bail-related procedures*
Indicator: Number of courts offering basic bail-related information in a systematic manner

Measure 8 *Use of suspended sentences and updated fine levels*
Indicator: Existing number of cases where suspended sentences were applied

Quality of justice

Measure 9 *Timeliness of court proceedings*
Indicator: Number of adjournment requests granted

Measure 10 *Courts exercising powers within their jurisdiction*
Indicator: Number of judges and registrars trained or retrained in the previous year

Measure 11 Consistency in sentencing
Indicator: Availability of criminal records at the time of sentencing

Measure 12 Performance of individual judges
Indicator: Number of errors in procedures

Measure 13 Compliance with requirements of civil process
Indicator: Number of cases in which the abuse of ex parte injunctions took place

Measure 14 Ensuring propriety in the appointment of judges
Indicator: Level of confidence among other judges

Public confidence in the courts

Measure 15 Public confidence in the courts
Indicator: Level of confidence among lawyers, judges, litigants, court administrators, police, general public, prisoners and court users

Efficiency and effectiveness of the public complaints system

Measure 16 Existence of credible complaint mechanisms
Indicator: Extent to which the public is aware of and willing to use the complaint mechanisms

This list became the basis for the refinement of the comprehensive assessment methodology. The various survey instruments for judges, lawyers, prosecutors, court staff (both current and retired) and businesses were reviewed to cover all the identified impact indicators.

By linking each single measure directly to a set of indicators, it was possible to establish separate baselines, which is a precondition for any truly meaningful monitoring exercise. The impact-oriented design of the assessment allowed the fine-tuning and adjustment of each single measure and will thereby contribute to the achievement of the overall objectives of the project.

Conclusion

One factor that is often overlooked is that the fight against corruption requires high levels of integrity in those who are engaging in it. Perfect anti-corruption strategies are not going to result in curbed corruption if the authorities advocating the strategy are perceived by the public to be lacking integrity. Both national and international bodies involved in fighting corruption need the confidence and support of the general public to succeed.

Although most people will agree with this position, the fact of the matter is that, despite all the surveys done, there is still scant research regarding the level of trust between the general public and national and international anti-corruption agencies. And there are no data available on how the public is assessing the integrity of key anti-corruption agencies, international aid institutions or both.

A broader understanding of the nature of corruption has led those confronted with it to look for more broadly based strategies to combat it. Such strategies should be holistic, comprehensive and multidisciplinary,

addressing all the factors that facilitate or contribute to corruption and all the possible options for measures against it, and integrated, in the sense that, once identified, all of the elements of an anti-corruption strategy must be developed and implemented in mutually consistent and reinforcing ways, avoiding conflicts or inconsistencies.

Moreover, the recognition that public sector and private sector corruption are often simply two aspects of the same problem has led to strategies that involve not only public officials, but also major domestic and multinational commercial enterprises, banks and financial institutions, other non-governmental entities and, in many strategies, civil society in general. To address the bribery of public officials, for example, efforts can be directed not only at deterring the paying and receiving of bribes, but also at reducing the incentives to offer them in the first place. This requires a partnership between the victims of corruption and a critical mass of honest public officials in key institutions working together as stakeholders (Langseth 2001).

The lessons described in the present article are based largely on what has been learned by the international community and its constituent countries in the struggle against corruption thus far. Perhaps the most important lesson has been that, because corruption is such a widespread and diverse phenomenon, anti-corruption measures must be carefully considered and tailored to the forms of corruption encountered and the societies and cultures in which they are expected to bring results. In this context, it is clear that there is much to be learned about the construction of viable anti-corruption strategies around the world.

It is also clear that anti-corruption measures must generally be broad-ranging, addressing, if not all aspects of the problem, then as many aspects as possible in a particular society. The most viable strategies have tended to combine elements such as criminal justice and deterrence, the setting of standards and education of officials, transparency and monitoring functions, and the raising of public expectations. Simply criminalizing bribery is unlikely to be effective unless accompanied by measures to deal with forms of corruption other than bribery, and without tackling the underlying social, cultural and economic factors that make those seeking action likely to offer bribes and the officials responsible likely to accept them.

Fighting corruption is a major undertaking which cannot be accomplished quickly or cheaply. It requires an extensive commitment in political terms and the dedication of social and financial resources, which tend to materialize only when the true nature and extent of the problem and the harm it causes to societies and populations are made apparent. Progress is difficult to achieve; even if achieved, it is difficult to measure. The creation of popular expectations about standards of public service and the right to be free of corrupt influences has been identified as an important element of many anti-corruption strategies, but the difficulties inherent in making progress also mean that those expectations must be carefully managed. Convincing populations that corruption must be extinguished may lead to cynicism and even worse problems involving corruption if the expectations are too high to be met in a realistic time frame.

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Core factors of police corruption across the world

By Hubert Williams[1]

Abstract

In the present article, the author examines the institutional and cultural factors that account for police corruption in various countries. He shows how police corruption arises primarily from deficiencies in four major areas: *(a)* recruitment, training and promotion; *(b)* resources, such as pay and equipment; *(c)* systems of accountability within departments, courts and the law; and *(d)* cultural traditions that inhibit the development of professional police standards. Recent efforts to combat police corruption are discussed and additional measures for minimizing it are suggested.

Introduction

Acts of corruption by people in power have long shaken public faith in government, but the loss of public faith is particularly acute when those acts involve the police. That is because the public relies on the police to uphold the law, protect the community and assist it in times of need. Police are also the most visible arm of government for most citizens and a yardstick by which they measure authority. When an officer acts illegally, he dishonours both himself and the law and justice system he represents.

Unfortunately, the organizational culture of the police does encourage some officers to commit acts of corruption. Such acts might involve taking monetary bribes, abusing their authority or concealing criminal enterprises. More importantly, they might also involve violation of human rights or ethnic and racial discrimination. When police organizations fail to punish travesties of justice, they inadvertently foster a culture of corruption that breeds discrimination, deception and greed.

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In the discussion that follows, the author explores core elements of the culture of corruption and shows why citizens of some countries have come to distrust their police. He also explores the broader societies that spawn renegade officers and shows why their citizens have equally negative attitudes towards legal and judicial systems that condone police lawlessness (*The Economist* 7 May 1994). A culture of corruption arises primarily from failures in four key areas: *(a)* recruitment, training, and promotion; *(b)* resources, such as pay and equipment; *(c)* systems of accountability within departments, courts and the law; and *(d)* cultural traditions that inhibit the development of professional police standards.

The concept of corruption used here in addressing these four factors is more inclusive than the standard definition of the term as an abuse of authority resulting in monetary or personal gain. This conventional definition excludes a broad category of related offences, such as outrageous police shootings or incidents of brutality that blatantly violate human rights. Those incidents should also come under the rubric of corruption because they reflect an underground police culture that subverts official standards of accountability.

Police corruption exists because police culture embraces and protects officers even when they intentionally kill an innocent person. Police culture is an outgrowth of the group camaraderie that links men who continually confront the dangerous and morally ambiguous world of the streets. A distinct ethic and code of behaviour distinguish the insulated world of police culture and they differ significantly from those outside the police world. Also integral to police culture is a tendency to close ranks in silence and to cover up knowledge of an officer's wrongdoing with a collective blanket of self-preservation (Crank 2000).

The mentality of "us versus them" implicit in police culture not only sets officers apart from ordinary citizens and creates a barrier to full involvement in the community, it also has a profound impact on the dispensation of justice (Amendola 1996). That is because an officer's sense of group identity can supersede his legal responsibility to testify against colleagues who have violated the law. The average police officer finds it difficult to betray fellow officers, even when those officers are involved in criminal matters; when he puts their welfare above his own integrity, he confirms the intimate ties that bind police officers (Weisburd et al. 2001). An entrenched esprit de corps exists because officers depend on each other for their very lives as they confront the violent and hostile world of policing. Every police officer knows that neither ordinary civilians nor the law will save him in the wee hours of the morning as shots crack out through the air; only a brother officer will do that. He owes that brother officer his unquestioning allegiance and complicit silence; and within this code of silence is the inherent flaw of a police culture that sanctions its members' lawlessness, particularly when race, ethnicity or economic class motivates an officer's actions. Indeed, the harm that police corruption can inflict on the moral authority of law enforcement is its greatest danger because it undermines both public trust in the law and the ability of the police to do their job.

Recruitment

In order to understand police corruption, a global phenomenon with grave social repercussions, it is necessary to examine its basic elements, the officers themselves. Who are the officers that police departments recruit? How are they trained? And what are the criteria for promotion? Answering these basic questions involves determining whether departments have procedures to do adequate background checks on recruits, psychological tests that accurately measure their suitability for police work, impartially administered written and physical examinations and training that imparts integrity and self-control. Police departments in which corruption is rife generally have weaknesses in these basic areas. As a result, some of their officers have dangerous criminal tendencies that undermine confidence in law enforcement.

In New Orleans, United States of America, for example, lenient recruitment procedures allowed a woman with murderous instincts into the police force. Antoinette Frank initially failed the civil service psychiatric evaluation upon applying to the New Orleans Police Department in 1993. Undeterred by this rejection, Ms. Frank hired her own psychiatrist to find her fit, and this initiative earned her a place in the department when a second civil service psychiatrist found her suitable after comparing the two previous evaluations. This evaluation procedure was entirely within department guidelines. It is arguable, however, that the department should have demanded higher proof of Ms. Frank's mental health and more rigorously monitored her during her probationary period, since the decision to hire Ms. Frank had tragic consequences. The department's faulty judgement call became apparent in 1995, when Ms. Frank and an accomplice entered a restaurant in New Orleans where they held up and executed a security guard and two of the owner's children. To add to the horror of the incident, Ms. Frank had moonlighted at the restaurant before, knew the family and even responded to their call following the shooting as though she knew nothing about it. Though lenient department procedures had allowed her in as a police officer, the court that sentenced her to death recognized her for the criminal she really was (*Baton Rouge Advocate* 1997; Human Rights Watch 1998a; Amendola 1996).

In Mexico, some officers are also criminals because the country is only in the incipient stages of setting up a computerized database to check applicants' records. Departments have little means of determining whether applicants have been fired by another department or convicted of crimes elsewhere in the country, a serious liability in a nation where many applicants have a personal history involving lawbreaking, violence and drug consumption (Lichfield 2000). As a result of inadequate background checks, Mexican police departments have unwittingly let too many unsavoury characters enter their ranks. Some recruits have ties to distributors of narcotics or stolen goods and see police work as an opportunity to expand their distribution and sales network. Others have been police officers for most of their lives and have wandered from one department to another, after being discharged for violent behaviour, corruption or links to drug trafficking (Botella and Rivera 2000).

Equally unreliable are recruitment procedures and examinations in rural India, where rich farmers perpetuate their economic advantage by paying their relatives' way into the police force. The practice of bribery plays such a substantial role in the recruitment process that it has spawned an underground industry, involving government clerks and retired policemen who lobby for persons seeking police jobs. Money also talks as recruits with supportive relatives bribe examiners during physical tests and obtain leaked test papers before written exams. The result of these antics is a law enforcement system in which the poor find it difficult to obtain police assistance. That is because some police officers are too busy accommodating their rich and generous relatives by denying justice to poor farmers or cheating them out of their land (Jeffrey 2000; Bayley 1969; Verma 1999; Singh 1984).

Determining the morale of officers also poses a challenge for Hungarian police departments, which fired 240 officers for corruption in 1999. Low pay was reportedly not the source of epidemic corruption that year, since the Government had recently approved the single biggest pay raise in 20 years. Instead, the root of corruption among officers was faulty recruitment criteria. Selection procedures, as the Minister of the Interior of Hungary concluded, did not yield a reliable psychological profile of candidates and there were shortcomings in recruitment exams. As a result, successful candidates did not always prove fit for duty (Kosztolanyi 1999; Fogel 1994).

Training

Training can theoretically mitigate some of the errors in recruitment and provide some important safeguards against corruption. It should give officers basic lessons in integrity, such as respect for citizens' rights, a sense of civic duty and self-control. It should teach them the limits of their authority and give them a basic understanding of the law, so they know when they are transgressing it. It should also instil a desire in officers to protect their integrity, not because they fear apprehension, but because they know corruption is wrong (Goldstein 1975). In short, training in integrity should produce officers committed to the ideal that they embody the "thin blue lines", as Americans call it, between order and disorder, between honest citizens and hoodlums. Unfortunately, officers in some countries come away from training with a fuzzy conception of this symbolic barrier against crime and anarchy. Poor training methods only serve to exacerbate the blunders in recruitment that preceded them.

Poor training has been blamed for the violent instincts of some Argentine police officers. Among other things, Argentina's police have been accused of involvement in a bloody terrorist bombing, the mafia-style murder of a journalist, drug trafficking and cattle rustling (Rotella 1999). Police committed a third of the killings that took place in Buenos Aires during the late 1990s. The reason, according to human rights groups that study the police, lies in bad training that fails to impart self-control or

effectively define the legal parameters of police authority. As a result, some Argentine police officers carry on as a law unto themselves (*The Economist* 1 May 1999).

In an even worse scenario, training in Nigeria accounts for an unsettling mixture of greed and cruelty in some police officers. According to the Centre for Human Rights and Democracy, based in Eldoret, Kenya, Nigerian police recruits, whose trainers frequently torture and mistreat them, work out their aggression while handling suspects in jail. The suspects who encounter such officers can only be pitied, since there have been instances in which Nigerian policemen tortured jail suspects for money. Odd as it may sound, however, these officers are simply practising the lessons in brutality that they drew from their trainers (Too 2002; Igbinovia 1985).

Some Mexican trainers have been similarly lax in impressing new recruits with the importance of either integrity or human rights. When taking new officers out on the street, those veteran officers confine themselves to three basic lessons that do little more than introduce a police culture of self-aggrandizement and blind loyalty: *(a)* the authority of commanders, shift officers or officials, in particular senior officials should not be questioned, no matter what misgivings a subordinate police officer may have about their orders (i.e. authority is always right); *(b)* veteran officers should teach new officers the fine points of the art of extortion, which the new officers should practise with caution; and *(c)* new officers should pay off their commander after every shift or he will assign them to a miserable and unprofitable post (Botello and Rivera 2000). Moreover, many Mexican police officers have completed only primary school, receive as little as three months training, and have a pitiful salary. The end product has been described as Mexico's "dirty cop" who commits crime instead of preventing it and is often seen stopping motorists on questionable grounds. In accordance with the rituals of corruption, the driver pays a small bribe to avoid a larger fine, the officer puts the money into his pocket and the car moves on (Sullivan 2000).

LACK OF RESOURCES

This form of petty corruption largely stems from cultural and educational deficiencies, according to Mexico's elite. "Not so", say police in Mexico and other countries, who see it as the product of simple necessity: "Everything in this job is money!" (Botello and Rivera 2000). That is the cri de coeur of a typical Mexican police officer as he tries to raise a family on about US$ 4,500 a year, besides paying for gasoline, uniforms and other basic equipment. Graft, bribery and extortion are integral aspects of survival for some Mexican officers, as they are for police officers throughout the world whose departments lack the resources to pay them adequate wages and give them the basic tools that they require for their jobs.

One example is Brazil, where the average police officer makes about US$ 300 a month and can go for years at a time without a raise. Some Brazilian police officers have been able to supplement their meagre incomes, however, by acting as "hit men" for organized criminal groups, a particularly lucrative sideline with the burgeoning of the illicit drug trade. In February 2000, one human rights group estimated that Brazilian police had participated in 2,500 killings since 1997, a figure that some law enforcement officials considered too low. In a partial state-by-state breakdown, this included more than 100 killings in Goias, 160 killings in Bahia and 500 killings in Acre, evidently one of the most violent areas in Brazil (Buckley 2000).

Acre is a prime example of how the drug trade has exacerbated police corruption and its ancillary violence. The state has historically been the scene of police lawlessness because its crippled rubber industry, its poverty and its vast stretches of jungle provide fertile ground for corruption. Throughout the 1980s, police corruption was mainly linked to numerous killings, often ordered by crime-weary merchants or landowners in property battles with rubber tappers. By the 1990s, however, the police diversified into profitable new ventures as drug trafficking became a hot industry in the state. In one recent case, 42 Acre policemen aided a drug trafficking ring by slaying numerous young men, some of them criminals, and leaving piles of mutilated bodies outside the state capital of Rio Branco. Evidence that emerged at the officers' trial revealed not only that the police had been paid well for their gory work, receiving US$ 1,000 or more per killing, but also that they had been ordered to make their killings as brutal as possible, hacking off some victims' fingers, arms or hands and decapitating others (Buckley 2000).

Controls and accountability

Lack of accountability

Are there adequate controls over policemen such as those involved in the Acre incident, and are there accountability systems to effectively stem police corruption in Brazil? These questions received considerable attention in 1999, when 150 policemen stood trial for murdering protesters from the landless workers' movement, supposedly in return for payment from local landowners. The trial that followed the slaughter was both a failure of justice and a demonstration of corruption in Brazil's legal system. Not only was the evidence strong, but the slaughter was also filmed and aired on national television (*The Economist* 21 August 1999). In the first days of the trial, however, the jury acquitted the three senior officers who had ordered the massacre. In other words, a verdict of innocence, notwithstanding the inescapable fact that the officers were guilty, as jurors told the judge. The jury's explanation for the incongruous verdict: there was

not enough evidence for a conviction because it was impossible to tell which officers had actually shot at protesters. The jurors were apparently swayed by the defence's argument that Brazilian law requires prosecutors to link crimes to specific individuals. The prosecution countered that it was not necessary to "individualize" the crime because the police had acted collectively (Bellos 1999). In appealing the verdict, the prosecution also contended that the court had asked inappropriate questions that confused some jurors, while other jurors had accepted bribes from the police in exchange for a favourable verdict. As for the lack of evidence implicating individual officers, police investigators had made numerous highly suspicious and amateurish errors that made it impossible to tell which officers had done the killing. Investigators did not get witnesses to try to identify the officers who had been present; they did not check officers' hands or clothes for gunpowder residue; and they failed to secure information about the weapons the officers had carried, making ballistics tests unfeasible (Buckley 1999).

A possible cover-up of the evidence, a vague law, the complicity of citizens in a miscarriage of justice, a lax court system: these are the major elements that emerged from the trial. Clearly, the police do not operate in a vacuum. Instead, they respond to norms prevailing in other segments of a criminal justice system where bribery is just another way to get results. Consider the cynical comment of a high-ranking member of the criminal justice system in Rio de Janeiro: "It is less expensive for a lawyer to pay off a member of the military police at the initial stages of an investigation than to pay off a judge at a later date" (Leeds 1996). In other words, lack of accountability in policing reflects and feeds off lack of accountability in the law and judicial system (Dutil and Ragendorfer 1997; Adorno 1995).

The examples below show how police corruption arises from deficiencies in the various dimensions of accountability. Police corruption reflects a lack of institutional accountability, in which police supervisors and managers sanction their officers' misconduct or stoop to it themselves. It reflects a lack of judicial accountability, in which courts turn a blind eye to police corruption or fail to mete out fitting punishment for misbehaviour. It reflects vague or weak laws that put inadequate restrictions on police authority. And it reflects government's failure to censure police misconduct. In short, police corruption creeps in where justice's gatekeepers fail to shut the door in its face.

Corruption is liable to occur when supervisors turn a blind eye to the warning signals of police misconduct. That was true in the case of Len Davis, a police officer in New Orleans who ordered the murder of Kim Groves after learning that she had filed a brutality complaint against him. Federal agents learned about the intended murder because they had already had Mr. Davis under surveillance for alleged drug dealing and happened to be making a recording of him as he ordered the killing. That was a stroke of luck since Mr. Davis's supervisors had evidently missed, or ignored, numerous warning signs that the officer was out of control. Evidence that emerged at Mr. Davis's subsequent trial revealed that he

had been the subject of about 20 complaints involving brutality and physical intimidation between 1987 and 1992. In most instances the complaints had not been sustained; in one case, however, he had been suspended for 51 days after having hit a woman on the head with his flashlight. As one candid officer told a reporter, "He's got an internal affairs jacket [file] as thick as a telephone book, but supervisors have swept his dirt under the rug for so long that it is coming back to haunt them" (Human Rights Watch 1998a).

Supervisory negligence, or complicity, similarly accounted for widespread corruption in the Rampart division of the Los Angeles Police Department. The corruption came to light in 1999, after Rampart officer Rafael Perez, who had been caught stealing a million dollars' worth of cocaine from police evidence storage facilities, signed a plea bargain in which he promised to uncover corruption within the Los Angeles Police Department. Mr. Perez eventually implicated about 70 other Rampart officers in wrongdoing and painted a picture of a division where it was routine to conduct illegal searches, beat and shoot suspects, plant illicit drugs on them and lie under oath. In recounting these incidents, Mr. Perez also showed how the Los Angeles Police Department had created an environment that allowed corruption to flourish. Supervisors missed or ignored signs that should have tipped them off to corruption in a local police station and there was a general lack of oversight by command supervision going all the way up through the department. Moreover, "telltale signs" of poor performance, such as suspicious paperwork, slipped right past supervisors, not only at the Rampart division, but also throughout the 10,000 member police force (Boyer 2001; Associated Press 17 February 2000; Bandes 2001).

The culture of corruption that produced the Rampart scandal also accounted for an act of gratuitous and revolting brutality that two police officers in the city of New York inflicted on Haitian immigrant Abner Louima. The horror of the incident is not simply that two police officers in a police station in New York felt free to sodomize a man with a wooden stick, leaving him with severe internal injuries. It is also a graphic expression of the underlying racism that taints American police departments and emboldened the two white officers to deny Mr. Louima's humanity as they defiled his body. It is the fact that none of the other officers present at the police station asked any questions. In addition, it is the fact that no officer at the station formally reported the alleged attack and, in the months following the incident, only two officers came forward to provide useful information. Even worse was the complicity of the New York Police Department Internal Affairs Bureau in the web of deception surrounding Mr. Louima's ordeal. A nurse at the hospital where Mr. Louima was subsequently treated reportedly called the Internal Affairs Bureau to report his injuries, but her complaint was not properly lodged or submitted to the district attorney's office, as required. In other words, the Internal Affairs Bureau, charged with rooting out incidents of abuse, had also followed the rules of police culture by keeping silent (Human Rights Watch 1998b; Bandes 2001).

Deficiencies in the law

In the United Kingdom of Great Britain and Northern Ireland, a police culture that also engenders corruption draws support from laws that inadvertently sanction the code of silence and require an unusually high burden of proof to convict an officer of wrongdoing. As a result of these idiosyncrasies in the law, departments have found it difficult to dismiss officers, even though some of them have been involved in bank robberies and drug dealing and others have been paid to suppress evidence and gather information on the strength of prosecution cases (Chesshyre 1998). The flaws in the law became particularly apparent in 1999, when the Crown Prosecution Service refused to press charges against 80 London officers from the Metropolitan Flying Squad questioned during the country's biggest police corruption investigation. Evidence against the officers was not strong enough to proceed with criminal charges, even though two former members of the Flying Squad who testified to setting up robberies and perverting the course of justice also convincingly implicated dozens of officers in similar crimes (Hopkins 1999). The reason for the untouchable corruption of the Metropolitan Flying Squad lies in the excessive legal protection afforded officers. As the Home Affairs Select Committee of the House of Commons and the Association of Chief Police Officers complained, the law errs by granting the right of silence to officers under investigation and by applying the criminal case standard of "beyond reasonable doubt" to cases involving officers rather than the "balance-of-probabilities" standard used in civil cases (Campbell 1998).

While the rigid standards of British law shield corrupt police, Russian Federation law goes astray by inadvertently giving them lucrative opportunities. Extortion and bribery are fostered by vague statutes that give the police unlimited powers to verify business fraud and by unrealistically high tax rates that force small businessmen to resort to "creative accounting", as one sympathetic lawyer called it. These same exorbitant tax rates that make many small businessmen lie about their profits also make them vulnerable to official bribes. This is because Russian law allows any police officer, even a traffic officer, to check the price list of any business. In a typical scenario, police officers come to see a small businessman at his store and confiscate goods worth about 60,000 roubles or US$ 2,200. They inventory the goods and take them away, leaving the businessman with almost no goods in his store. The next day, the businessman is ordered to appear at a police station, where the police whisper in his ear, "Give us 30,000 roubles, and you can have your goods back." (Lambroschini 2000; Wilson and Walsh 1997).

Institutional corruption

The existence of police corruption in the Russian Federation has been the subject of much political and social commentary. It is new, however, to Japan, where the media has recently been awash with tales of high-level

police corruption. It is hard to tell whether the spurt of recent news about institutional corruption stems from an erosion of Japanese moral values or whether the Japanese police have been particularly successful in concealing their flaws from the public eye. It is certainly true that Japanese police managers understand the police code of silence. It is all carefully spelled out in a Yokohama police manual used in several departments. The manual's "Guidelines for Measures to Cope with Disgraceful and Other Events" advises that, when police scandals erupt, press and television reporters should be told as little as possible, because exposing internal corruption would only erode public trust (Fisher 1999). In the past, the strategy of discretion, or genuine virtue, worked very well indeed, since the Japanese public implicitly trusted its police (Bayley 1991). Then, in 1999, a series of scandals revealed several offences committed by individual officers and organized attempts to cover them up. Disgraceful episodes involving drugs, blackmail and embezzlement shamed police departments throughout Japan, including those in Nagasaki, Aichi, Kyoto and Saga (Takeshi 2000; Hiromitsu 2000).

Two particular incidents threw the spotlight on the lack of institutional accountability within the Japanese police. The first involved a system-wide effort by the management of the police in Kanagawa to cover up the possession and use of stimulant drugs by an assistant police inspector. If the inspector's crime was somewhat lurid, the nature of the cover-up effort was even more sinister. Although the police found a syringe at the officer's home, they not only hid the fact, but also claimed that they could find no evidence after searching the premises (Hiromitsu 2000).

In the second incident, the head of the Niigata Prefectural Police and the chief of the Kanto Regional Police Bureau were drinking and playing mah-jong at a hot spring inn on the day that a 19-year-old woman was rescued after a child molester had held her captive for nine years. The head of the Prefectual Police not only failed to return to police headquarters to supervise the kidnapping investigation, but also allowed his subordinates to prepare false reports on the circumstances in which the woman had been taken into protective custody in an attempt to conceal their apparent negligence. The department claimed to have found the woman, though she was actually discovered at her abductor's home by health-care officials drawn there by his erratic behaviour. Moreover, investigators had previously failed to follow up a meaningful clue to the woman's whereabouts (Sims 2000; Takeshi 2000).

Considering the depths of duplicity involved in the Niigata incident, the officers involved came off very lightly indeed. The National Public Safety Commission, which supervises the police in Japan, found both the head of the Niigata Prefectural Police and the chief of the Kanto Regional Police Bureau to be derelict in their duties and forced them to resign. A spokesman for the Prime Minister of Japan responded by acknowledging that the reprimand of the two police officials had been sadly inadequate. Unfortunately, he went on, the Government's hands were tied because police supervision rested solely in the hands of the National Public Safety Commission (Sims 2000). In shifting the responsibility to the National Public

Safety Commission, the Government relegated the two officials to a comfortable retirement. Although the law requires the Commission to supervise the police, it does not specify the scope of its authority or set down any supervisory provisions. It also fails to provide any staff or offices for the prominent citizens who typically serve as members of the Commission. As a result of those gaps in the law, the police themselves actually run and control the Commission (Hiromitsu 2000). Even in Japan, with its long tradition of elaborate rules, rigid hierarchies and strict codes of behaviour, the police have largely escaped official control.

Cultural background

The gaps in official accountability are evidently much more visible in Mexico, which has a long-standing reputation for corruption (Parker and Gallagher 1997). Consider the following incidents: opposing groups in Mexico's police force battled in the streets with clubs and fists after authorities had accused their commanders of having stolen US$ 115 million from the police organization's retirement fund; a ranking official in the federal attorney-general's office committed suicide and investigators subsequently found more than US$ 1 million in unexplained cash in his safety deposit boxes; "hit men" gunned down members of the federal anti-drug police, and authorities later attributed the attack to a "settling of accounts" by drug smugglers that the police had double-crossed. The ordinary police officer on the street who extorts money from motorists and demands protection money from persons with illegal street stalls is only the most visible sign of the prevalent corruption in Mexican society (Althaus 2000).

Sanctioned by cultural mores

Mexico is just one of many countries throughout the world whose cultural mores have discouraged professional police standards from developing. Corruption flourishes particularly well in Latin America, Africa and former communist countries (Uildricks and Van Reenen 2001; Heymann 1997) because of the failure of officials to provide efficient services and the desire of citizens to flout the law when convenient. All this is aggravated by a Byzantine maze of laws and regulations that encourages the public to offer tips to bureaucrats in exchange for short cuts through the red tape (Althaus 2000). Police corruption, together with the low professional standards that engender it, grows out of deeper social and historical trends.

In Mexico, the absence of professional police standards is a historic error that dates back more than a century. Following its independence in 1810, Mexico plunged into lawless pandemonium as different factions fought for political control of the Government. It was not until 1890, after dictator Porfirio Diaz had taken power, that the country made any attempt to create a disciplined police force. But that effort lasted only 20 years, and even then security forces often stole from the poor. Diaz's

reign ended with the 1910 Mexican Revolution and political tumult resumed until 1930, a year after the creation of the Institutional Revolutionary Party. For some reason, the Party decided not to create a professional police force, and the negative consequences of that omission snowballed in the 1980s with the advent of economic instability and extensive drug trafficking. Many of the police who emerged from these decades of political and economic chaos have been described as "small-scale entrepreneurs who pay a franchise fee to corrupt commanders for a gun and a badge" (Corchado and Lawrence 1999; Pimentel 2000).

The low professional standards of some officers in the Russian Federation also have deep roots in the past. Corrupt police in the Russian Federation are the true sons of a "Mother Russia" whose citizens are hardened by centuries of paternalistic, bureaucratic inefficiency under the tsars, followed by decades of callous corruption at the hands of the communist security service. Under the old communist command economy, authorities always tolerated a certain amount of crime, since shady deals, and even theft, were necessary to make the rigid system work. Commodities were illegally traded with the full knowledge of law enforcement officers who themselves profited. True, the police did police, but only in the service of the State or self-enrichment. As a result, the crime fighters of the post-communist Russian Federation lack a strong tradition in law enforcement beyond self-aggrandizement and loyalty to the rulers of the day. Now they, like the police in many countries, must learn to defend public interest according to new professional standards (Land 1998; Fogel 1994; Kertész and Szikinger 2000).

Addressing corruption: a new initiative

There has been some recent progress on this front as countries throughout the world take steps to root out police corruption. In Japan, the Kanagawa Prefectural Police and the Yokohama District Prosecutor's Office have tightened procedures for handling internal affairs' investigations and are prosecuting some criminal acts in court that they previously resolved through disciplinary action (Takeshi 2000). Hungary has established a roving team of 18 high-ranking police officers to investigate complaints about the service and has appointed a special "customs commando" to rid its ports of police corruption (Land 1998). Brazil has passed a law requiring police officers accused of murder to be tried in civilian court rather than in military court, where sentences are rare (*The Economist* 21 August 1999). Mexico has taken steps to ensure that hired officers are not opportunists who see police work as a mother lode of bribes: since 1999, police officers in the federal attorney-general's office (known as the PGR) have been required to undergo lie detector, psychological and drug tests, and have received 18 rather than 4 months of training. In addition, PGR officers now receive higher salaries, an extremely important reform in a job where bribery is common (*The Economist* 11 December 1999).

Tackling corruption

While these measures have indisputable value, they do not address all the core factors of police corruption. As discussed above, police corruption has roots in both police institutions and the societies that engender them. Corruption exists because many departments are not doing a good job of hiring, training, paying and disciplining their officers. It is fostered by vague laws that give police too much discretion and by judges who give them too much leeway. It is concealed by a police culture that dispenses the rough justice of the streets and closes ranks around renegade officers. And it is sanctioned by cultural mores that stoically accept corruption as an everyday inconvenience rather than fuming against it.

Laws must be passed with zero tolerance for corruption. Government must give departments enough resources to provide their officers with the training and equipment required to carry out their responsibilities; and police must, of course, be paid adequate wages. Appropriate monitoring procedures must be established to ensure that police serve the public in accordance with the law, rather than becoming a law unto themselves. Law enforcement agencies must establish a strong code of ethics as a guide and then make sure that all officers understand it, that it becomes second nature through training and that the example of command reinforces its importance (Williams 1992). In addition, mechanisms must be established to detect and suppress corruption at the earliest possible stages. Such mechanisms might include early warning systems, such as Risk Analysis Management System (RAMS II) and Integrated Quality of Service Indicator (QSI), developed by the Police Foundation of Washington, D.C., which help identify and assist troubled officers before they engage in serious misconduct (Williams 1996). They might also include independent external review groups or federal investigation programmes, such as the Police Misconduct Pattern or Practice Program of the United States Department of Justice. While such measures cannot eradicate all the underlying sources of corruption, they do have the potential to restore public trust in the police as the most visible arm of government and the law.

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Robbery against humanity: the treatment in international humanitarian law of economic crime as a basis for persecution and genocide

By Dan Saxon[1]

Abstract

Efforts to halt corruption and different kinds of economic crimes are commonplace in many national criminal justice systems. Since at least the Second World War, the prosecution of these kinds of crime has formed part of the jurisprudence of international humanitarian law ("the law of war"). Today, as the international community attempts to create a more consistent and uniform system for the enforcement of these norms, economic and property crimes continue to form the basis of individual criminal responsibility for certain categories of crime against humanity and genocide.

Introduction

The body of crimes known as "crimes against humanity" are those crimes which so shock the conscience of humankind by their widespread or systematic nature that all humanity is considered to be the victim of the offence. The term "crime against humanity" evokes horrific images of barbaric physical acts committed against persons, such as those which took place in the death camps of the Second World War and in the "ethnic cleansing" campaigns carried out in Bosnia and Herzegovina and during the slaughter of hundreds of thousands of Tutsi in Rwanda. However, certain kinds of economic crime may also be punishable as a crime against humanity. Economic crime that violates fundamental human rights and that is committed in a widespread or systematic manner against a particular racial, religious or political group may constitute the crime against humanity known as "persecution". The present article will attempt to trace the history of the jurisprudence concerning such property crime in international humanitarian law (also known as the "law of war").

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Precedents from the trial of the major war criminals before the Nürnberg Tribunal

The judgement of Nürnberg found that the plunder of Jewish property and the imposition of a collective fine against the Jewish community constituted persecution (*Trial of the Major War Criminals* 1947, pp. 247-249):

> "The persecution of the Jews at the hands of the Nazi Government has been proved in the greatest detail before the Tribunal. It is a record of consistent and systematic inhumanity on the greatest scale."

It went on to say (*Trial of the Major War Criminals* 1947, pp. 247-249):

> "With the seizure of power, the persecution of the Jews was intensified. A series of discriminatory laws was passed, which limited the offices and professions permitted to Jews; and restrictions were placed on their family life and their rights of citizenship. By the autumn of 1938, the Nazi policy towards the Jews had reached the stage where it was directed towards the complete exclusion of Jews from German life. Pogroms were organised which included the burning and demolishing of synagogues, the looting of Jewish businesses, and the arrest of prominent Jewish businessmen. A collective fine of 1 billion marks was imposed on the Jews, the seizure of Jewish assets was authorized, the movement of Jews was restricted by regulations to certain specified districts and hours. The creation of ghettos was carried out on an extensive scale, and by an order of the Security Police Jews were compelled to wear a yellow star to be worn on the breast and back."

The Nürnberg Tribunal stated that the Leadership Corps of the Nazi Party as a group or organization should be declared criminal, in part due to its efforts to instil the persecutory policies of economic and political discrimination against the Jews put into effect shortly after the Nazi regime had come to power (*Trial of the Major War Criminals* 1947, p. 259). In addition, a number of high-ranking Nazi leaders were individually convicted of crimes against humanity and war crimes at Nürnberg for their roles in economic offences directed primarily against the Jewish people.

For example, in convicting Hermann Göring for, inter alia, crimes against humanity and war crimes, the Nürnberg Tribunal observed that Göring had played a leadership role in stealing the property of the Jews and removing the Jewish population from the economic life of German-controlled Europe (*Trial of the Major War Criminals* 1947, p. 282). Walter Funk served as Nazi Germany's Minister of Economics and President of the Reichsbank. During the war, Funk participated in planning the economic exploitation of Germany's occupied territories, particularly the former

Union of Soviet Socialist Republics (USSR).[2] While Funk presided over the Reichsbank, coins and banknotes taken from concentration camp inmates, as well as gold teeth and fillings, were stored in the Reichsbank's vaults. The Tribunal found Funk guilty of, inter alia, war crimes and crimes against humanity (*Trial of the Major War Criminals* 1947, pp. 304-307). Wilhelm Frick, the "chief Nazi administrative specialist and bureaucrat" (*Trial of the Major War Criminals* 1947, p. 298), drafted, signed and administered many laws designed to remove Jews from German life and economy. Those laws paved the way for the "final solution" implemented against the Jews of Europe (*Trial of the Major War Criminals* 1947, p. 300). The Tribunal convicted Frick of, inter alia, war crimes and crimes against humanity.

In the trial known as the "Ministries Case", the accused Emil Puhl had served as a leading executive of the Reichsbank. Puhl directed the receipt, classification, deposit, conversion and disposal of properties taken by the Schutzstaffel (SS), the Nazi special police force, from victims murdered in concentration camps. Those items included gold teeth and fillings, spectacle frames, rings, jewellery and watches (*Trials of War Criminals* 1997, p. 609). Puhl argued that stealing the personal property of Jews and other concentration camp inmates was not a crime against humanity. The Tribunal disagreed (*Trials of War Criminals* 1997, p. 611):

> "What was done was done pursuant to a governmental policy and the thefts were part of a program of extermination and were one of its objectives. It would be a strange doctrine indeed, if, where part of the plan and one of the objectives of murder was to obtain the property of the victim, even to the extent of using the hair from his head and the gold of his mouth, he who knowingly took part in disposing of the loot must be exonerated and held not guilty as a participant in the murder plan. Without doubt, all such acts are crimes against humanity and he who participates or plays a consenting part therein is guilty of a crime against humanity."

Puhl was found guilty. Thus, as early as the Nürnberg trials, international law recognized that persons who contributed to economic crimes could be held responsible for crimes against humanity, even when the contribution occurred far from the scene of the actual offence against life and property.

However, the Nürnberg Tribunal's application of international humanitarian law to economic crimes was not without limits. The accused, Karl Rasche, was a professional banker who facilitated the provision of large loans from his bank to different SS enterprises that employed large numbers of concentration camp inmates. Other loans approved by Rasche supported Nazi resettlement programmes. The Tribunal found that the accused was aware of the criminal purposes for which the loans were sought. Nevertheless, the court held that while loans to be used for an

[2]When the German military developed its "starvation plan" for occupied areas of the former USSR (which was approved by Hitler and Göring), experts at the German Reichsbank reviewed the economic considerations (Gerlach 2000, p. 215).

unlawful purpose may be immoral, they did not constitute criminal activity under international law. Hence, Rasche was acquitted of the charge of crimes against humanity (*Trials of War Criminals* 1997, pp. 621-622). If issued today, however, such loans might bring criminal liability on the lender pursuant to the theory of "joint criminal enterprise" liability.[3]

Thus, the Nürnberg jurisprudence generally supports the conclusion that economic measures may constitute persecutory acts and thereby serve as a basis for crimes against humanity (Opinion and Judgement 7 May 1997, p. 279).

The Eichmann trial

The 1961 trial of Adolf Eichmann in Israel also produced support for the proposition that crimes against property may also constitute persecution and, therefore, a crime against humanity. The District Court of Jerusalem observed the following (Attorney General of Israel v. Eichmann 1968):

> "With the rise of Hitler to power, the persecution of Jews became official policy and assumed the quasi-legal form of laws and regulations published by the Government of the Reich in accordance with legislative powers delegated to it by the Reichstag on March 24, 1933 (session 14, p. 71) and of direct acts of violence organised by the regime against the persons and property of Jews ... . The purpose of these acts carried out in the first stage was to deprive the Jews of citizen rights, to degrade them and strike fear into their hearts, to separate them from the rest of the inhabitants, to oust them from the economic and cultural life of the State and to close to them the sources of livelihood. These trends became sharper as the years went by, until the outbreak of the war. Even before German Jewry suffered its first general shock on April 1, 1933, when Jewish businesses were boycotted, the arrest of Jews and their dispatch to concentration camps had begun."

Eichmann was found guilty and executed.

International Tribunal for the Former Yugoslavia jurisprudence where economic offences constitute the crime against humanity of "persecution"

The establishment of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 has led to additional jurisprudence describing the scope of economic crimes

[3]For a comprehensive discussion of this theory, see Appeals Chamber Judgement (15 July 1999).

that fall within the ambit of crimes against humanity. In *Prosecutor v. Dusko Tadic, aka "Dule"*, the Trial Chamber held that "the crime of persecution encompasses a variety of acts, including, inter alia, those of a physical, economic or judicial nature, that violate an individual's right to the equal enjoyment of his basic rights" (Opinion and Judgement, p. 281).

Subsequently, in *Prosecutor v. Kupreskic, et al*, another Trial Chamber took a similarly broad view of the scope of persecution. It held that persecution can involve a variety of discriminatory acts involving attacks on political, social and economic rights (Judgement 14 January 2000, para. 615). While concluding that only gross or blatant denials of fundamental human rights can constitute crimes against humanity, the Trial Chamber noted that a narrow interpretation of the crime of persecution would be contrary to the modern view of "persecution that has emerged from customary international law" (Judgement 14 January 2000, paras. 605 and 620).

In the Kupreskic judgement, the Trial Chamber addressed the question of whether the "comprehensive destruction of Bosnian homes and property" could constitute the crime against humanity of persecution. It held that, in certain circumstances, attacks on property may constitute persecution. While the destruction of certain kinds of property (a luxury automobile, for example) may not entail the denial of fundamental human rights, other attacks on property might constitute "the destruction of the livelihood of a certain population" (Judgement 14 January 2000, para. 631).

Accordingly, in the Kupreskic judgement, the Trial Chamber held that the comprehensive destruction of homes and property could constitute a gross "denial of fundamental human rights, and, if committed on discriminatory grounds, may constitute persecution" (Judgement 14 January 2000, para. 631). Indeed, such conduct was cited as one basis for the convictions of the co-accused for the crime of persecution (Judgement 14 January 2000, paras. 763, 784, 791, 804 and 814).[4]

In the Kupreskic judgement, the Trial Chamber emphasized that discriminatory acts of persecution must not be considered in isolation. Thus, while certain kinds of property crimes, by themselves, may not constitute a crime against humanity, these acts must be examined in their context and weighed for their cumulative effect (Judgement 14 January 2000, para. 615 (e)). That theory was carried forward by another Trial Chamber in *Prosecutor v. Dario Kordic and Mario Cerkez*, which emphasized "the unique nature of the crime of persecution as a crime of cumulative effect" (Judgement 26 February 2001, para. 199). Accordingly, the Trial Chamber stated (Judgement 26 February 2001, para. 205):

> "The destruction of property with the requisite discriminatory intent may constitute persecution. If the ultimate aim of persecution is the 'removal of persons from the society in which they live alongside the perpetrators, or eventually from humanity itself', the widespread or

[4]Some of these convictions were reversed on appeal, on different grounds (Appeal Judgement 23 October 2001).

> systematic, discriminatory destruction of individuals' homes and means of livelihood would surely result in such a removal from society. In the context of an overall campaign of persecution, rendering a people homeless and with no means of economic support may be the method used to 'coerce, intimidate, terrorise and forcibly transfer ... civilians from their homes and villages'. Thus, when the cumulative effect of such property destruction is the removal of civilians from their homes on discriminatory grounds, the 'wanton and extensive destruction and/or plundering of Bosnian Muslim civilian dwellings, buildings, businesses, and civilian personal property and livestock' may constitute the crime of persecution."

Similarly, in *Prosecutor v. Radislav Krstic*, the Trial Chamber found that the burning of civilian homes in the villages of Srebrenica and Potocari by Serb soldiers constituted a persecutory act (Judgement 2 August 2001, para. 537).

In *The Prosecutor v. Tihomir Blaskic*, the Trial Chamber specified the forms of crimes against property that might constitute the crime of persecution (Judgement 3 March 2000, para. 234):

> "In the context of the crime of persecution, the destruction of property must be construed to mean the destruction of towns, villages and other public or private property belonging to a given civilian population or extensive devastation not justified by military necessity and carried out unlawfully, wantonly and discriminatorily. In the same context, the plunder of property is defined as the unlawful, extensive and wanton appropriation of property belonging to a particular population, whether it be the property of private individuals or of state or 'quasi-state' public collectives."

In summation, the jurisprudence of the International Tribunal for the Former Yugoslavia has consistently found that crimes against property may, in the appropriate context, rise to the level of crimes against humanity.

The Rome Statute of the International Criminal Court

In the Rome Statute of the International Criminal Court (A/CONF.183/10), the term "persecution" is defined as the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity (art. 7, para. 2 (g)).

Although economic crimes are not specifically mentioned in this provision, it is reasonable to assume that progressive jurisprudence will continue to find that such offences, in the appropriate context, constitute persecution. Moreover, article 8, para. 2 *(a)* (iv), of the Rome Statute provides that such offences include extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

It is therefore likely that crimes against property will continue to give rise to criminal liability for offences falling under the jurisdiction of the International Criminal Court.

Additional jurisprudence where economic offences constitute violations of international humanitarian law

The gravest crime known to humankind is genocide.[5] According to article II of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (General Assembly resolution 260 A (III)), the crime of genocide includes the commission of certain acts, with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such. One of those acts is "deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part" (art. II *(c)*). The drafters of the Genocide Convention noted the potential use of economic crime, such as confiscation of property and looting, to inflict such destructive conditions of life on a particular group as to constitute genocide (Schabas 2000, p. 165).

Economic causes of genocide continue to be discussed and clarified today. In a lawsuit brought before the International Court of Justice following the commencement of the North Atlantic Treaty Organization (NATO) bombing of Yugoslavia in 1999, the Federal Republic of Yugoslavia alleged that NATO committed genocide against the Yugoslav nation and argued that one of the bases of the genocide charge was the bombing campaign's destruction of the country's economy (Schabas 2000, p. 169).

Moreover, in Guatemala, peace accords ending that country's three-decade civil war mandated the establishment of a commission to review the causes and consequences of that armed conflict. In its report, the Commission for Historical Clarification, led by the respected German jurist Christian Tomuschat, concluded that the Guatemalan army had committed genocide against the Mayan people during the 1980s. It was noted in the report that the army's use of "scorched earth" tactics on Mayan villages, including the destruction of crops and property, fell within the scope of the Genocide Convention's prohibition against deliberately creating conditions in life calculated to bring about the destruction, in whole or in part, of a particular group (Commission for Historical Classification, p. 41).

The crimes committed against Guatemala's Mayan community usually occurred in areas of extreme poverty and underdevelopment. Nevertheless, the day may not be far off when the deliberate destruction of the high-technology economic infrastructure of a nation or ethnic group, the computer links that increasingly form the core of its business and commerce, may form a basis for allegations of crimes against humanity or genocide. Should such actions result in a blatant denial of fundamental human rights

[5] One commentator described genocide as "an aggravated crime against humanity" (Lippman 1994, p. 13).

or be calculated to destroy, in whole or in part, a national, ethnic, racial or religious group, then institutions charged with the enforcement of international humanitarian law will have to hold accountable the individuals responsible for such crimes.

Conclusion

The most important objective of the enforcement of international humanitarian law is to reduce the suffering caused by war. While popular culture does not usually associate property and economic crime with crimes against humanity and genocide, international law has made such connections for many years. Professionals who work to investigate and curtail such crimes should be aware that their skills are also needed to hold war criminals accountable for their actions.

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Part two
Notes and action

Abacha and the bankers: cracking the conspiracy

By Bola Ige[1, 2]

Under the former military regime in Nigeria, the abuse of public power for private gain was widespread and was one of the country's most severe problems. Among those Nigerians who held high public office and subsequently found themselves in possession of great wealth was the late dictator General Sani Abacha. He and his collaborators are estimated to have embezzled assets of at least $5 billion. That sum includes monies allegedly derived from the systematic misappropriation of funds from the Central Bank of Nigeria, bribes received from foreign companies and kickbacks on inflated contracts with Nigerian companies under the control of the Abacha family. Most of the assets were channelled abroad through simple bank transfers, in cheques or in cash. It is suspected that funds are currently located in Austria, the Bahamas, Brazil, Canada, Dubai, France, Germany, the Hong Kong Special Administrative Region of China, Italy, Kenya, Lebanon, Liechtenstein, Saudi Arabia, Singapore, Sweden, Switzerland, the United Kingdom of Great Britain and Northern Ireland and the United States of America. Assets were paid into personal bank accounts or accounts held mainly by Nigerian or offshore shell companies, with access available to Mr. Abacha, his family members or close associates.

On 29 May 1999, after eight military regimes, two civilian republics and a short-lived interim government, President Olusegun Obasanjo came to office. His reputation as a man of integrity has helped him to obtain prompt and massive support from the international community. He has embarked on an anti-corruption programme, but to many its implementation appears to be too slow.

Among the high points of President Obasanjo's anti-corruption action is the recovery of assets siphoned out of Nigeria by past military regimes. With this, he is continuing the State policy initiated immediately after Mr. Abacha's death under General Abdulsalam Abubakar's interim Government.

A series of steps have been taken to recover the remaining assets believed to have been stolen by the Abacha family and its associates. The

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[1]The late Attorney-General and Minister of Justice of Nigeria.

[2]The present article, prepared in cooperation with Petter Langseth and Oliver Stolpe of the Centre for International Crime Prevention, Office on Drugs and Crime, is based on a paper presented by Bola Ige at the 10th International Anti-Corruption Conference, held in Prague in October 2001.

Government of Nigeria has created a special investigative panel, which is currently conducting financial investigations to identify monies and to seek mutual legal assistance from a number of countries; however, no tangible results have been achieved yet. Legal proceedings are under way in various jurisdictions to repatriate money frozen in foreign banks and Nigerians hope that the international community can help to speed up the process.[3]

The current recovery programme of the Government has been criticized for its alleged limited scope, in that it has so far addressed only those funds diverted by the Abacha family and not those diverted by other former members of past military regimes. President Obasanjo, however, has repeatedly said that he will initiate an investigation of any person against whom there is convincing evidence.

Recovery efforts

Basically, the assets that the Government is trying to recover have two illicit origins:

(a) Nigerian authorities suspect that not less than $2-3 billion was stolen from the Central Bank of Nigeria;

(b) Not less than $2 billion in bribes was received by Mr. Abacha and his associates. Those bribes were all paid by national and, to a larger extent, foreign companies to obtain often-inflated State contracts.

The Government of Nigeria has so far succeeded in recovering about $1 billion. Most of that money was recovered under the former regime of General Abdulsalam Abubakar. Strong investigative powers under the former military regime were used to effect the transfer of monies to the Government's account at the Bank for International Settlements. Under the new democratic order and with the reintroduction of constitutional rule, investigators and prosecutors have a more difficult task than before.

All the monies recovered originated from the diversion of funds from the Central Bank of Nigeria. The Nigerian investigators are sceptical regarding the likelihood of recovering the bribe monies.

Since the Government of President Obasanjo came to power, requests for mutual legal assistance have been submitted to Liechtenstein, Luxembourg, Switzerland, the United Kingdom and the United States. Based on those requests, $147 million in assets have been frozen in Liechtenstein, $602 million have been frozen in Luxembourg and $660 million have been frozen in Switzerland. In addition, following informal contacts, accounts of unknown value have been frozen in Jersey in the United Kingdom.

In the case of the United Kingdom, until a short time ago a lack of progress had been blamed on the law, which would not allow cooperation

[3]As reported on 19 April 2002, a settlement between Nigeria and the Abacha family will return a total of $1 billion to the Government of Nigeria by banks from countries around the world, including Liechtenstein, Luxembourg, Switzerland and the United Kingdom. The total amount of funds recovered by the Government of Nigeria is now approximately $2.2 billion.

until charges had been filed against the respective offenders in Nigeria; however, since the trial of Mohammed Abacha, one of Sani Abacha's sons, began, there have been no further obstacles. In fact, in September 2001, the Government of the United Kingdom responded positively to Nigeria's request for mutual legal assistance. Because of the various suits before British courts on this matter, no comment can be made here. Correspondence between President Obasanjo and President George W. Bush of the United States indicates that mutual legal assistance will soon be forthcoming from that country as well.

Switzerland has been particularly cooperative. Although Nigeria and Switzerland have no treaty on mutual legal assistance, Switzerland can provide mutual legal assistance based on national law and a declaration of reciprocity. In addition to freezing $660 million, the Swiss judicial authorities currently handling the case have also indicted Mohammed Abacha, Abubakar Atiku Bagudu, a former minister and Ismaila Gwarzo, former National Security Adviser to Sani Abacha, under Swiss law for money-laundering, fraud and taking part in a criminal organization. They are also examining the possibility of pressing charges against Swiss financial intermediaries.

More assets are suspected of being located in or having been channelled through Austria, the Bahamas, Brazil, France, Germany, the Hong Kong Special Administrative Region of China, Lebanon, the Libyan Arab Jamahiriya, Saudi Arabia, Singapore and the United Arab Emirates. Informal discussions with these countries have produced rather different results. While some countries, such as France and Germany, seem prepared to cooperate if they receive a formal mutual legal assistance request, others have proved far more reluctant.

Abacha funds in the major banks

The main banks involved in the scandal are among the world's largest commercial banks. Many of them ignored the most basic rules of due diligence when entering into business relations with the Abacha family. In a considerable number of cases, no complex money-laundering schemes were adopted, the members of the family involved did not hide their true identity and bank officials found no impediments to accepting their funds. In a reference note, one bank official described Mohammed Abacha and his brother Ibrahim as the sons of a "well-known and respected member of the northern Nigerian community" and found them to be "unfailingly charming, polite and, above all, reliable" (United States Senate 1999; Minority Staff 1999, 2001).

In late 2000 and early 2001, the British Financial Services Authority and the Swiss Federal Banking Commission published reports on the outcome of investigations against the banks involved in handling the monies allegedly diverted by Sani Abacha and his associates. Both agencies found "severe control weaknesses" in many of the banks involved. Regardless of the suspicious nature of the economic background, several banks neither

sought clarification nor filed suspicious transaction reports. The Swiss Federal Banking Commission investigated 19 Swiss banks for their dealings with Sani Abacha and his collaborators and published a report naming six banks for not respecting due diligence obligations (Swiss Federal Banking Commission 2000). In addition, the Commission has filed a formal complaint against a Swiss bank through the banking industry's self-regulatory body. However, while the amount the bank actually handled amounted to $214 million, the maximum fine is $5.9 million. Given the high returns the bank may have earned handling such amounts, such a comparatively small fine does not constitute a real deterrent. In the United Kingdom, the Financial Services Authority investigated 23 banks and identified significant control weaknesses in 15 of them. However, British law does not permit the Financial Services Authority to make its report public or to name the financial intermediaries involved.

Meeting the challenges of preventing the diversion of funds through corrupt practices and of recovering such funds

Besides obtaining mutual legal assistance from those countries to which the monies were allegedly transferred, the challenge faced by the Nigerian authorities is the conclusion of a successful court case against Mohammed Abacha and others. For the recovery effort, it will be crucial not only to obtain convictions for corruption, fraud, money-laundering and related crimes, but also to link the wealth abroad to particular crimes committed in Nigeria. If that link cannot be established, many of those States where assets are or are thought to be located will refuse to freeze, confiscate or repatriate the assets. It is, therefore, important to obtain verdicts that will be difficult to challenge either in Nigeria or elsewhere.

The other challenge facing the Nigerian authorities and the international community is to prevent the future diversion of funds. For that purpose, Nigeria must tighten its financial controls and strengthen mechanisms to prevent corruption and related practices. At the same time, a mechanism should be put in place by the international community to assist countries such as Nigeria in their attempts to recover their national wealth from abroad by providing technical expertise and strategic guidance. The international financial centres must also increase the oversight of financial operators and ensure compliance with due diligence rules. Some concrete measures to meet some of these challenges are presented below.

Global case management assistance

States seeking to recover funds diverted through corrupt practices by persons in positions of power, such as political leaders or top government officials, should be supported in their efforts with technical expertise and

strategic guidance. In particular, the United Nations may consider giving home to a structure able to provide such guidance, since the neutrality of the Organization would make such a contribution acceptable and the case management credible to all sides.

One function performed by such a mechanism should be global case management assistance. Since Nigeria lacked sufficient expertise in that field, it was forced to outsource that function to private lawyers operating out of the countries that had received requests for mutual legal assistance from the Government of Nigeria. Such a mechanism should have a capacity-building function with a view to empowering national authorities to pursue international cases of corruption and related practices on their own. It should also provide a platform to enable the States parties involved in such international corruption cases to meet on a regular basis in order to identify legal and political obstacles and to collaborate in designing a common strategy to overcome such obstacles.

The case manager would work mainly with the requesting jurisdiction to decide on the locus of civil and criminal complaints and to advise on hiring lawyers and investigators. He or she should also assist in the preparation of the case at the national level, in particular by exercising some quality control regarding the national investigation and prosecution in order to ensure that the evidence gathered and the results obtained meet the standards of the requesting State and can be used there in the context of the mutual legal assistance procedure.

Prevention of the future diversion of funds

In parallel to the recovery effort, it is essential to strengthen national mechanisms designed to prevent funds from being diverted through corrupt practices. That would not only help to protect the country and its people from being victimized in the future by corrupt leaders or high-level public officials, but also contribute to the credibility of the recovery effort and give additional legitimacy to the request for international judicial assistance. Such measures should include:

- Strengthening official anti-corruption bodies to prevent and control corruption at the national level;
- Developing and implementing a comprehensive national integrity strategy;
- Designing mechanisms for monitoring the expenditure of projects, in particular development projects, involving the recipients as well as civil society at large.

These measures should be financed through a “governance premium”, consisting of 1-3 per cent of the recovered funds and of every donor contribution received by Nigeria. The recipient of this premium should be the recently established Independent Commission for the Prevention of Corruption, the institution with the mandate to carry out those tasks. As

a government-driven initiative might not be perceived as credible by the general public, the Commission should be responsible for the planning, implementation and monitoring of an integrated national integrity strategy and anti-corruption action plan.

Such a governance premium would encourage the donor community to allocate the necessary funds to strengthen the national integrity systems of recipient countries. To date, good governance has not been among the priorities of donors, nor among those of most recipient Governments. The partnership of President Obasanjo, as a credible champion of good governance, and the United Nations, as a neutral arbiter, would be ideal for promoting the governance premium concept.

New international legal instruments

The importance of the forthcoming United Nations convention against corruption in the context of asset recovery cannot be emphasized enough. That legal instrument, once signed and ratified by Member States, will greatly enhance international judicial cooperation in asset recovery. Indeed, that could be the single most important feature of the future convention.

It is hoped that the future legal instrument will also address the principles of due diligence and "know your customers" in international financial transactions, in order to stop corrupt leaders from taking their ill-gotten gains abroad. With evidence that Mohammed Abacha repeatedly transferred money directly from the treasury to his accounts in some of the world's biggest and most reputable commercial banks, it is clear that those banking regulations are not being complied with. A Swiss banker at a recent Transparency International workshop in Prague started his presentation by saying that "a dollar is a dollar is a dollar" and claiming that it was very hard for bankers to identify "dirty" money. Considering the vast sums of money that some African leaders and their relatives transfer through countless bank accounts, it should be clear to everyone where the money is coming from. This painful fact may well be brought home to the bankers as and when they are finally held accountable for their tacit complicity in handling stolen funds.

The Government of Nigeria will continue to do everything in its power both to enable the repatriation of the assets in question and to support international efforts to improve cooperation so as to ensure that, in future, other nations do not suffer similar experiences.

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Measuring corruption at the village level

By Jotham Tumwesigye[1]

The path to integrity

Uganda stands at a crossroads in its journey back from the political and institutional chaos of the 1970s and 1980s. Then, corruption and malingering became an intrinsic part of the reward system, fully exploited by most. In 1986, when the National Resistance Movement took power after decades of strongman rule, it led the country into dramatic structural changes, including military demobilization, civil service reform and constitutional reform. The Movement also introduced parliamentary and local district council elections, economic liberalization and administrative decentralization (Ruzindana, Langseth and Gakwandi 1998).

Rebuilding ethics and integrity has been a priority part of the action programme of the National Resistance Movement. The Office of the Inspector General of Government was created early in the reform process (in 1986) and has since become a key advocate of the rule of law and the reduction of corruption. A Leadership Code of Conduct, adopted in 1992, requires leaders to declare their wealth and also forbids influence-peddling, the private use of public information and other forms of corruption. Workshops for senior civil servants, held during civil service reform in 1993, inspired the Inspector General of Government to request that a donor facilitate national integrity workshop, which was held in 1994 (Ruzindana, Langseth and Gakwandi 1998).

While planning the national integrity workshop, a first for both Uganda and the international aid community, it was discovered that Transparency International, a Berlin-based non-governmental organization focusing on combating corruption, was planning to hold, in Uganda, its first African regional workshop on corruption at around the same time. A four-way partnership sprang up between the Office of the Inspector General of Government, international aid communities, Transparency International in Berlin and the Ugandan chapter of Transparency International. All four partners were involved in both workshops, which were held in late 1994 (Ruzindana, Langseth and Gakwandi 1998).

[1]Inspector General of the Government of Uganda.

The national integrity workshop was attended by a broad-based group of government officials and representatives from parliament, the judiciary, civil society, the private sector and the media. They recommended 40 actions, all of which were implemented by 1998. Two of the recommended actions required changes in the constitution: the Inspector General of Government now reports to parliament rather than to the President, and discussions in parliament are now all open to the public. Changes were incorporated in Uganda's new constitution that was adopted in 1995 (Office of the Inspector General of Government 1995).

Anti-corruption policies and measures

Under the coordination of the Office of the Inspector General of Government, a major aid institution, Transparency International and the Inspector General of Government subsequently: identified needs; designed communications strategies; held participatory integrity workshops involving a broad-based group of stakeholders, including representatives of civil society, the media, the judiciary and the legislative and executive branches of the Government; organized training (awareness-raising and skill-building for one institution) for parliament, parliamentary committees, the judiciary, cabinet members, journalists, the private sector; and carried out service delivery and integrity surveys.

Other key measures included:

- Removing opportunities for corrupt practice by liberalizing and deregulating many elements of the economy;
- Reducing the size of the public service by one half between 1992 and 1995, eliminating "ghost" workers and increasing civil service salaries to a "living wage" calculated for 1997;
- Setting up the Uganda Revenue Authority and tripling revenue performance by reducing tax and customs evasion;
- Permitting the media to be free and independent and supporting the training of investigative journalists;
- Inviting all stakeholders to become involved in national and district integrity workshops in order to increase public oversight of the State;
- Conducting anti-corruption surveys among households and businesses, with subsequent broad distribution of the results;
- Establishing the Ministry of Ethics and Integrity, which developed an integrity strategy and an anti-corruption action plan;
- Opening seven regional offices and increasing the budget and staff levels for the Office of Inspector General of Government;
- Strengthening other accountability offices, notably that of the Auditor General and Director of Public Prosecutions, by making them more autonomous and better equipped.

All these actions represent the longest ongoing effort by any national Government aimed specifically at curbing corruption through a participatory process. The leader of the National Resistance Movement, Yoweri Museveni, was elected President in 1996. He had pledged to lead a crusade against corruption, which had characterized Ugandan leadership since 1962, when the country gained independence.

President Museveni has actively challenged corruption. He recently fired his brother from the post of Army Commander for conduct incompatible with his office and removed the Police Commissioner following the exposure by the media of corrupt acts committed by the police force; and he dropped three ministers from the cabinet after they were censured by parliament.

In 1998, the Inspector General of Government requested that a national integrity survey be conducted. The survey was the first large-scale study of corruption to be undertaken at the local level in Uganda. The purpose was to collect information about experiences and perceptions of corruption in government public services from a sample of 200 communities (18,412 households) from all the districts in Uganda. In addition, information was elicited from 1,595 public service workers. Sixty per cent of the heads of household were peasants or farmers (CIET International 1998).

The survey results were then discussed among 348 focus groups with more than 5,000 participants. Members of households were asked about their experiences with services such as primary education, health, the police, local administration, the judiciary and the Uganda Revenue Authority. The survey was part of an integrated approach to measuring corruption in Uganda. Focus group discussions also took place with key opinion makers to review the problem areas and prioritized causes of corruption. More important, the focus groups assessed the viability of the changes suggested by the citizens, the professionally facilitated focus groups and the service providers, thus performing a "reality test" on the recommendations made.

Other means of curbing corruption in Uganda include the following:

- *Integrity workshops*. Integrity workshops and meetings have become a cornerstone of the participatory process of curbing corruption at all levels of government. They have become the key tool for building a bridge between awareness-raising and action. Central to this approach have been small working groups that develop action plans, shifting the discussion from complaint to action. Participatory workshops are also used to develop broad-based participation to maintain momentum. The broader the base of participation and the wider the degree of ownership of the action plan in all stages, the more likely it will be carried out and sustained;
- *FM radio stations*. The Office of the Inspector General of Government has supplemented integrity workshops with the use of FM radio stations that reach all corners of the country and are the

most effective medium for sensitizing the peasant population. Discussion programmes on corruption have become a common feature on these radio stations and have greatly helped to raise the profile of the Office of the Inspector General of Government as an anti-corruption agency from the level of 1998, when only 32 per cent of households responding to the integrity survey held that year had heard of the Inspector General of Government;

- *Investigative journalism workshops*. The role of the media in raising awareness has been critical to the strategy for developing accountability in Uganda. The work of newspaper journalists who investigate malfeasance at the highest level has led to the censuring of high-ranking political figures, with strong support from parliament. Since fewer than 10 per cent of Ugandans get their news by print, training for radio journalists was begun in 1999, when the number of district-level radio stations, often broadcasting in local dialect, began to increase. Much as print journalist training has proved a key ingredient in spurring the national debate, radio journalist training has proved instrumental in buttressing the participatory process to curb corruption at the district level;
- *Censure*. In 1998, the Ugandan parliament was involved in three cases where government ministers close to the President were censured for illicit enrichment or resigned as a result of a censuring motion. Such action would have been unthinkable a few years earlier. Since 1997, the strengthened media, parliament and the Office of the Inspector General of Government have been able to make "grand" corruption a lower-profit and higher-risk proposition. Those three institutions complement each other in addressing corruption at the highest levels, fostering insecurity among the corrupt and fuelling a national debate on transparency and good governance. The key challenge for any parliament seeking to reduce corruption is to ensure that its own house is in order. Preventive measures include monitoring (publishing) declared assets of parliamentarians and strengthening the ethics committee in parliament. The recent formulation of rules of procedure to be followed by members of parliament has made the censuring process fairer and more transparent;
- *Judicial commission of inquiry into the police*. Pressure was put on the police by the more than 30 district integrity workshops disseminating the survey. Findings indicated that an average of 63 per cent of the people surveyed had experienced corruption when dealing with police. Those findings, coupled with the finding that more than 50 per cent of the citizens experienced corruption in dealings with the courts, created a lot of anger among the public, who demanded a change. The Government was obliged to come up with a credible response. A three-member commission, headed by a judge, decided to travel across the country to

listen to complaints about police corruption. Subsequently, about 30 senior police officers were suspended and the head of the police force, the Inspector General of Police, who had attacked the credibility of the Commission in the media and was himself implicated in unethical conduct, was retired;

- *Other judicial commissions of inquiry*. After the successful conduct of the judicial commission of inquiry into the police, judicial commissions of inquiry have been increasingly used to deal with controversial public matters involving allegations of corruption or financial mismanagement. Three commissions of inquiry are worthy of note. One was set up to inquire into the privatization of State-owned banks and the mismanagement of private sector banks. Another investigated the purchase by the army of second-hand helicopters from Belarus that were not overhauled as originally agreed. The third looked into allegations of plunder by government leaders of mineral wealth in the Democratic Republic of the Congo. The reports of the first two commissions of inquiry have been received and the Government has indicated that it will implement their recommendations. The hearings of the third judicial commission of inquiry are expected to be concluded soon. Its findings and recommendations will be of great interest to the Secretary-General of the United Nations, who had instituted his own inquiry into the allegations of plunder of mineral wealth in the Democratic Republic of the Congo by persons from various countries, including Uganda. The findings of that inquiry were, however, contested by the Government of Uganda;
- *Judicial Integrity Committee*. The judiciary responded to the negative results of the integrity survey by setting up a Judicial Integrity Committee headed by a Supreme Court judge. The objective of the Committee is to strengthen integrity within the judiciary and to improve on its service delivery. The Committee set up in 2000 has toured the country and collected views from the public on how best to improve judicial performance. Together with the results of a survey funded by the Department for International Development Education of the United Kingdom of Great Britain and Northern Ireland that is currently being conducted, the judiciary hopes to collect sufficient data on which to base future reforms for better service delivery by the judiciary.

Harnessing existing forces

Three existing internal forces have been harnessed to drive the anti-corruption movement:

- *Decentralization*. Local authorities tend to be more amenable to rapid change and more open to broader participation. The recent

emphasis on integrity planning meetings at the district level in Uganda has coincided with the increasing importance of the district in delivering decentralized services. The participatory workshops at the district level are experimenting with techniques for developing implementable and realistic action plans for the most important public services such as health, education, the police and the judiciary;

- *High-level political will*. The will to fight corruption has been observed in Uganda and elsewhere to ebb and flow with the electoral cycle. Leaders facing an election are more susceptible to civil society and international demands and more motivated to lead national efforts against grand corruption. The longer a leader has been in power, the more he comes under pressure from colleagues, peers and members of his party, clan and family to tolerate corrupt behaviour. High-level political will is maximized when there is strong pressure from civil society. Outside facilitation can help: the involvement of staff from international aid institutions and Transparency International has been highly visible and sustained. The Administration is aware of the importance of the perceived integrity of the country for both private sector investment and the continued involvement of the international aid community;
- *Empowered civil society*. The third internal force that can increase the risk for public servants who intend to misuse their public powers is an empowered civil society. By systematically feeding the country assessment back to civil society through integrity meetings at the district and lower levels, civil society is empowered to ask questions and demand change. The empowerment through increased awareness is especially effective when civil society obtains district-specific information that can be compared with the national average.

Use of data to empower the public to hold the government accountable

Using the country assessment, a Government can begin to identify and examine areas of weakness, devise solutions and monitor progress. In Uganda, it paid to conduct the survey across all districts in the country and compare the types, levels, location, cost and effect of corruption in one district with the national average. At the district and lower levels, integrity workshop action plans were agreed to by stakeholder groups. That increased the risk and uncertainty for public servants at the district and lower levels who might have considered misusing their public power for private gain. Information is power; the challenge is to get the information to the people who are suffering because of corruption. Most anti-

corruption efforts end up reaching only the people who are paid to fight corruption. Reaching the average citizen at the village level is difficult and costly. It was a surprise to all involved when more than 1,000 people attended a sub-county meeting in one of the districts. Citizens were suffering and eager to help to curb corruption.

Following this experience, the Office of the Inspector General of Government started to address the challenge of empowering civil society to hold the Government accountable by communicating the results of the survey to citizens. Short summaries were made in the local language and local newspapers and radio stations were engaged to reach the victims of corruption.

Role of the media

According to the national integrity survey, fewer than 30 per cent of the people surveyed knew of the Office of the Inspector General of Government after 12 years of operation. Only one half of the people surveyed thought that the Office of the Inspector General of Government was a credible institution in the fight against corruption. Responding to that, the Office has decided to improve its image when raising awareness about:

- The negative effects of corruption;
- Levels, location and types of corruption and what can be done to fight corruption;
- What the role of the public should be.

The level of trust between the anti-corruption agency and the public is critical for the collaboration between the public and the agency.[2] To reach the public in Uganda, the Office of the Inspector General of Government decided to involve the media at the district level. The Office had already been involved in strengthening the professional skills of the print media and more than 300 journalists had been trained between 1994 and 1999. With fewer than 20 per cent of the population reading newspapers, and with new FM radio stations going on the air after the airwaves were privatized in 1996, more than 90 per cent of the public could be reached by radio. The Office therefore initiated an investigative journalist workshop for district radio journalists. Radio journalists covered most of the district and sub-county integrity meetings. The Office also started weekly anti-corruption programmes on national and local stations.

Dissemination of key service delivery survey findings

The collection of information is only the start of a long, challenging process. The risk and cost of being a corrupt official must be increased.

[2] In the Hong Kong Special Administrative Region of China, for example, 85.7 per cent of the public trusted the Independent Commission against Corruption and 66 per cent of the people submitting corruption reports were willing to identify themselves (LaMagna 1999).

Ensuring access to information, though important, is only one measure to curb corruption. Too many institutions regard data collection as the whole task and they are missing the opportunity to use the data.

The findings of the 1998 National Integrity Survey (CIET International 1998) supported this conclusion: 70 per cent of the people interviewed that year felt that there was a great deal of corruption in public services, and 57 per cent believed that corruption had become worse in the previous two years.

Bribery was the main form of corruption known by households interviewed in the survey (71 per cent of households); it was followed by embezzlement (27 per cent) and nepotism or tribalism (19 per cent). The main conclusions of the survey were as follows:

- Forty per cent of service users had had to pay a bribe in order to receive a service;
- The worst cases of bribery reported for public service provisions were in contact with the police (63 per cent had paid a bribe) and the judiciary (50 per cent);
- The rate for paying bribes for services was higher among men (43 per cent) than among women (31 per cent);
- The rate for paying bribes for services was (1.5 times) higher in urban communities than in rural communities;
- The average (mean) amount paid for bribes ranged from 12,000 Uganda shillings (for health services) to 106,000 Uganda shillings (for judiciary services);
- Forty-six per cent of service workers thought that they would suffer if they reported corruption cases and were therefore unwilling to report on colleagues. The examples given of suffering included victimization by managers and supervisors, isolation by colleagues and being treated as a traitor;
- Service users who paid bribes experienced worse service than those who did not pay bribes;
- The more contact a service user had with the service provider (for example, contact with different service workers or increased contact with the same person), the more bribes were paid. Therefore, services requiring more provider-user contact per request resulted in more bribes being paid. It was found that in more than one half of the cases involving such contact (57 per cent), more than two visits were needed to complete the dealings. It was concluded that, if there were better, more efficient and streamlined services (for example, a "one-stop" service), the incidence of corruption would be reduced;
- There were differences in how corruption was interpreted. Practices considered to be corrupt by communities were considered

acceptable by service workers; 17 per cent of service providers felt that it was justifiable to ask for a bribe and 94 per cent felt that it was corrupt to do so;

- Bribes were less likely to be paid if the service users received useful information about the service;
- Seventy-seven per cent of the community representatives surveyed said that paying bribes was bad and 18 per cent specifically stated that it was unfair and that, by paying bribes, poor people suffered more;
- Communities and service workers had (not surprisingly) different views on how corruption cases should be addressed. Communities favoured firing and other disciplinary measures (38 per cent of respondents) and prosecutions (25 per cent), whereas service workers favoured improving their pay and working conditions (56 per cent of respondents). Although there were clearly issues about pay, experience suggested that addressing the issue of pay alone would not reduce corruption.

The findings of surveys conducted in 1996 and 1998 (CIET International 1996, 1998) support these views. Local people were found to be frustrated by the worsening corruption throughout society and saw no effective mechanisms for making officers accountable. The individual comments made by people were powerful testimony to the extent of corruption and how little progress the Government was perceived to be making in addressing it (CIET International 1998): "These days, people are like hyenas: they do not beg but just steal. Where has the Government gone and where should our cries go?" Corruption was seen by people as an intense and selfish desire for riches, as well as a mechanism for coping with low or non-existent salaries, delayed reimbursement or inadequate services in the case of lower-level civil servants and local councillors. People reported several categories of corruption:

- Embezzlement;
- The involvement of Uganda in foreign wars, which made it possible to steer funds away from efforts to improve service delivery;
- Favouritism by the Government in terms of developing some districts before others;
- Nepotism, which resulted in incompetent and unqualified persons receiving posts;
- Local favouritism, in which funds and projects were directed to the councillor's constituent area, while other less advantaged areas were neglected;
- Lack of transparency in land allocation and in decisions made by district tender boards.

Dissemination of the key findings of the focus groups

The discussions of the focus groups were recorded by professional supervisors. Below are selected quotations from those discussions (CIET International 1998).

General comments about corruption included the following:

"The whole administration is rotten from top to bottom."
Mbarara, Site 1, Men

"We have nothing to do as people. If you report to a higher level, the community leaders will punish you accordingly."
Rukungiri, Site 1, Women

The causes of corruption were cited as follows:

"Public servants are corrupt because of greed for money or insecurity of tenure due to rampant retrenchment and they need to get rich very quickly." *Tororo, Site 1, Men*

"We are not paid salaries. When I come across someone who can give me money, I just receive it [extort it]." *Bundibugyo, Site 1, Men*

"Embezzlement happens, especially in the salary section. They claim the computer has eaten their money." *Moroto, Site 2, Women*

"Nothing much can be done because even the bosses above have known that their juniors are corrupt and have done nothing about it. They are corrupt themselves." *Hoima, Site 2, Men*

The effects of corruption included the following:

"People lose confidence in [the] Government. They do not even see the reason for elections." *Kasese, Site 3, Men*

"Some people are murdered due to corruption." *Ssembabule, Site 3, Men*

"Young men are forced to steal in order to pay bribes."
Mbale, Site 4, Women

Issues were raised regarding the health sector:

"A man had taken his pregnant wife to hospital to have their baby. He did not have the money demanded by the hospital. While he was searching for money, the hospital workers let his pregnant wife die."
Soroti, Site 1, Men

Issues were raised about the police (some police did not perform their duties unless they were paid extra to do so):

"When you report a case to the police, you are asked for transport money to effect the arrest. Even if the suspect is arrested, you are asked for money to take the suspect to court."
Apac, Site 3, Men

"Police bosses expect their subordinates to give them money as the subordinates are forced into corruption to satisfy their bosses. In turn, the bosses do not inspect or supervise." *Mubende, Site 1, Men*

"A robber came to someone's home and [stole] everything in the house. He was later apprehended, but then the person who reported him was arrested instead." *Kaborale, Site 3, Men*

"Police collaborate with thieves to secure guns. When you report this to the police as corruption, they charge you instead." *Iganga, Site 3, Men*

Issues were raised about the courts:

"If you do not 'cough up something' [pay a bribe], the case will always be turned against you and you will end up losing it." *Mbale, Site 4, Men*

"The clerks won't allow you to see the magistrate unless you have given some money." *Lira, Site 4, Men*

"The magistrates keep on adjourning cases until they are bribed." *Kamuli, Site 1, Men*

Issues were raised regarding education and problems with Universal Primary Education (UPE):

"During the registration of children for UPE, teachers would ask for some 'little' money." *Nakasongola, Site 1, Women*

"The child of a parent who complains in school meetings is hated and mistreated." *Iganga, Site 2, Women*

Issues were raised regarding the tackling of corruption:

"The communities should learn to report cases of corruption. But who to? And are we safe?" *Mbale, Site 3, Men*

"The community is willing to report corrupt service workers, but they do not know the offices of the IGG [Inspector General of Government] in their area." *Luwero, Site 4, Women*

Danger at the crossroads

It is perhaps understandable that Uganda's leaders, having made considerable progress, tend to focus on past accomplishments rather than on the current problems. But taking a break at this point is risky. From both the inside and the outside, there is a danger of undermining reform and feeding people's cynicism and fatalism. A mid-term review in 1998 questioned the causal relationship between awareness-raising efforts, or even short-term action plans that are implemented, and actual sustained change in institutional behaviour. The global business sector perceives Uganda's anti-corruption programme as not going as well as hoped, as evidenced by the country's ranking as the tenth most corrupt country out of 85 surveyed in the 1998 Transparency International corruption index.

The apparent shift in the attitude of leaders may be buying time for a necessary behind-the-scene political reassessment, reflecting that the nature of the game has changed over the last five years. The national integrity system in Uganda has evolved from an empowerment project closely identified with the presidency and the Government to a programme that has the potential to enjoy broad-based support from civil society. But only when citizen pressure is broad-based, deep-seated and steady can the push for change transcend individuals and neutralize the danger of a given group co-opting the process. The question now is, how far is the leadership prepared to go?

Follow-up to the country assessment and anti-corruption planning process

Key challenges for the international aid community in helping a country implement a country assessment include the following:

- Providing additional support to the Governments anti-corruption activities;
- Considering support for possible new Ugandan initiatives, such as;
- Increasing the budget of the Office of the Inspector General of Government so that it can establish regional and district offices;
- Launching an intensive public awareness campaign;
- Building coalitions with non-governmental organizations and the private sector;
- Introducing citizen education programmes for youth;
- Using an existing network of volunteers assembled for election monitoring by the National Organization of Civic Education and Monitoring to train local officials in fiscal management and citizens in monitoring local government activities;
- Involving Ugandan officials and journalists in workshops outside the country in order to bring them into contact with international good practice.

Other challenges that remain to be addressed by the national integrity strategy include:

- *First and foremost, responding to citizen demand for increased local autonomy to deliver key services means opening the circles of participation to a more diverse group of stakeholders*. It also entails creating the space for the ever-widening base of the pyramid of civil society. While this participatory process offers no quick fixes, it is the surest way to build an accountable Government;
- *Maximizing the power of data by using more rigorous surveying methods that generate hard facts*;
- *Identifying credible indicators to measure progress, in response to the mid-term review and in order to instil discipline in working towards stated objectives*. There is a danger in using "soft" indicators because they can more easily be manipulated, running the risk of the integrity process being perceived as a farce, shielding corruption;
- *Making the international aid communities aware that they must be prepared to commit to a medium- or long-term process in which*

quick wins and easily quantified results may be rare. By acting as facilitator, the international community is likely to prove pivotal in the process;

- *Cultivating new skills in the local and international aid communities*. Fostering accountability requires skilled personnel to navigate the transition and translate principles and opportunities into locally driven mechanisms. The required skill set is in short supply and is poorly rewarded in the present context, where integrity programmes tend to be defined by what people are good at doing rather than what is needed.

The biggest challenge facing Uganda in rebuilding its integrity is for all stakeholders, government and non-governmental, to agree on a holistic integrity strategy and an anti-corruption action plan supported by all donors and emphasizing:

- A balance of power across the executive, judiciary and legislative branches to ensure that the executive branch governs according to law and with full accountability, with codes of conduct for both the public sector and the private sector;
- The rule of law, by cleaning up and strengthening both the police and the judiciary;
- A requirement that all government agencies quickly develop, publish and widely disseminate (especially throughout their offices) "citizens' charters", under which they establish their commitment to serve the public, provide realistic time frames for service delivery and identify those responsible for receiving and addressing complaints;
- The establishment of a high-level national integrity commission composed of well-known individuals of integrity to oversee the processes in non-party political ways (this could be an overarching commission or a series of advisory committees of prominent citizens to oversee progress in the various arms and areas of the strategy).

This national strategy, indeed, the international aid organizations' strategy, should focus both on re-establishing "values" and on reforming systems through short-, medium- and long-term activities in the following four areas: public education and awareness-raising; institution- and capacity-building; prevention; and enforcement of the new ground rules.

Conclusion

Like others in the "development business", the Global Programme against Corruption has experienced a steep learning curve with regard to understanding the negative impacts of corruption and devising means of curbing

it.[3] After almost five years of governance work in Uganda, both the Government and donors have realized that the problem of corruption was underestimated. As a result, a sufficiently serious strategy or approach to control the situation was not designed. To make matters worse, many of the local and international stakeholders are still in denial and are unwilling to accept responsibility for the current situation.

In Uganda, the current situation is serious, both in terms of petty corruption and "grand" corruption. The Norwegian auditors of a programme for handicapped children discovered that 92 per cent of the receipts from workshops under the programme had been falsified. When the responsible project managers were later taken to court, their files were lost and they went free, despite strong pressure from the Government of Norway and senior Ugandan politicians to enforce the law. Unfortunately, that may be representative of the current level of corruption and the extent of law enforcement in the country.

The good news is that serious players in Uganda are seeking to change the current situation. In 1998, President Museveni established the Ministry of Ethics and Integrity, one of the first such government ministries in Africa, and selected a strong and bold woman as its leader. With the help of an independent and active media and a strong parliament, supported by a capable and independent Office of the Inspector General of Government and an Auditor General of Government, there is hope that, as far as corruption in Uganda is concerned, the worst is over. There has already been evidence of change, with the censuring of three ministers by parliament, the dismissal of the police commissioner and the imprisonment of the heads of parastatals, private banks, permanent secretaries and heads of departments, all as a result of the enforcement of anti-corruption laws and procedures. That is at least a start.

The objectives of the integrated approach are the following:

- *Open dialogue* among stakeholder groups, traditional and non-traditional, in order to address corruption;
- *A stronger sense of common ownership* for reform initiatives brought about through the broad participation of stakeholder groups and, in turn, a greater interest in successful implementation;
- *Increased public awareness* about the overall impact of corruption, the role of civil society in fighting it and the resources available for that fight;

[3]The Global Programme against Corruption, in close collaboration with non-governmental organizations and the private sector, is helping States by facilitating a real process of change to improve governance by empowering the victims of corruption to identify the problems (the types, levels, causes, cost and effects of corruption), to suggest remedies and to monitor the impact of the anti-corruption strategies and action plans. Experience has shown that, to succeed in fighting the misuse of public powers for private gain, citizens have to be given access to information and a voice in their own Government and ultimately make their Government answerable to the people that it represents. Widely disseminating data from locally requested, independently conducted surveys can play an important role in this area. The objectives are to improve the timeliness, quality, coverage and cost of the services delivered to the public and to bolster the rule of law.

- *Greater accountability among civil servants* for providing services in an efficient and effective manner;
- *A heightened risk in participating in corrupt practices*, as public awareness of basic rights to services and complaint mechanisms has increased.

In the case of Uganda, the results of the country assessment were disseminated by the print and broadcast media and have served to universalize the discussion on corruption, from the level of the central Government all the way to the village level. The progress made in addressing corruption will be determined by the next country assessment. As each subsequent assessment is conducted, the process will reinforce the evidence-based and impact-oriented elements of the integrated approach and will lead to even greater improvements.

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Building public confidence in anti-corruption efforts: the approach of the Hong Kong Special Administrative Region of China

By Alan Lai[1]

The Hong Kong Special Administrative Region (SAR) of China, having no natural resources and measuring a mere 1,098 square kilometres, has developed over a relatively short period of time from a place heavy on low-cost, labour-intensive manufacturing to a leading world business centre. With 6.7 million residents, this cosmopolitan city of the Orient is well-known for its commitment to stamp out corruption and admired for being one of the least corrupt cities in the world.

The Hong Kong SAR has changed from a place stricken with widespread corruption not long ago to a city acclaimed for its integrity. However, that path to probity was not without difficulties. The Independent Commission against Corruption, established in 1974, has been a key agent in the battle against corruption. To achieve its ends, it required an effective and sustainable strategy. It also needed the backing of a Government ready to entrust it with sufficient resources and the necessary legal powers to tackle corruption, which is an insidious and secretive form of crime. Above all, the Commission had to win the public's trust and support so that people were willing to report those who were corrupt and fraudulent.

With the reunification of Hong Kong and China in 1997, the world's attention was drawn to the workability of the unprecedented concept of "one country, two systems". In some quarters of the Hong Kong SAR, concerns were expressed about its ability to maintain an effective grip on corruption and corruption-induced crime. Those concerns, legitimate as they might have seemed prior to reunification, have since been gradually forgotten. The successful and relentless pursuit of the corrupt by the Commission offers the most compelling testimony to the Government's commitment to fight corruption.

The international community has witnessed the success of the Commission in fighting corruption. Surveys conducted by international organizations over the past few years have repeatedly confirmed that corruption is being policed effectively in the Hong Kong SAR. For example, the Hong Kong SAR continues to climb the integrity ladder, as indicated in the annual Corruption Perception Index of Transparency International. The most

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notable vote of confidence has come from the international business community: well over 3,000 multinational corporations currently maintain their regional headquarters in the Hong Kong SAR, for they know that doing business there entails no "hidden costs".

The "dark age" of corruption

To understand the wholehearted support given by the people of the Hong Kong SAR to the anti-corruption cause, it is necessary to appreciate the historical background against which the Commission was established.

Unimaginable as it might seem, corruption was a way of life in Hong Kong in the 1960s and 1970s. To the vulnerable and the underprivileged, mostly low-income manual workers with little education, bribery was a "necessary evil", a way to get things done. Competition for public resources which had become scarce after a massive influx of immigrants from China further exacerbated the situation. "Going through the back door", bribing public officials who held the key to those resources, was widely practised. In the business community, too, corruption was widespread, as businessmen regarded illegal commissions as a "lubricant" for business.

The problem of corruption reached epidemic proportions by the 1960s and early 1970s, when it permeated every aspect of the community. Subtle hints turned into outright solicitation. It was no secret, for instance, that:

- Patients would have to pay "tea money", a euphemism for bribe money, for a blanket or a glass of drinking water in public hospitals;
- A person could purchase a driving licence by bribing the examiner;
- Taxi drivers could avoid prosecution for minor traffic offences by sticking a "procured" label on the windscreens of their vehicles;
- By paying "protection money", street vendors could avoid having to pay penalties for not being licensed;
- Health inspectors would turn a blind eye to unhygienic kitchens if they were given "tea money".

The problem was also widespread among many government departments at that time. It was particularly rampant in the police, where powerful corruption syndicates were institutionalizing bribe-taking. Through the police, protection could be bought for many forms of organized crime, vice trades, illegal gambling and even drug trafficking. As a result, a number of police sergeants were dubbed "multimillionaire sergeants", though their official monthly earnings were very small. Corrupt junior police officers were able to lead lives as extravagant as those of the rich and famous.

Corruption in the police at that time was so widespread and syndicates were so powerful that some police officers privately commented that "some get on the bus; others run alongside it; yet very few stand in front of it". In many cases, the process would start with a police officer finding some cash in his personal locker. He could quietly accept it and tacitly "get on the bus" of corruption. Or he could refuse to take part in the corruption, mind his own business and "run alongside the bus", in which case he would become an outsider and could never expect to go far in his career. His worst option was to "stand in front of the bus" by reporting it; that could ruin his career prospects and lead to victimization.

The pain inflicted by corruption syndicates on the life of the average citizen was at that time indescribable. One social campaigner, Elsie Elliot, summed up succinctly the plight of the common people:

> "Almost everybody was suffering. Every shopkeeper in a resettlement estate was having to pay, every hawker in a bazaar or marketplace [was] having to pay ... it was squeezing them to death. Hawkers had to pay for the licence and then they had to pay regularly to operate."

The lid on public anguish finally blew off when a senior police officer fled to the United Kingdom of Great Britain and Northern Ireland in mid-1973 while under investigation for alleged corruption by the Anti-Corruption Office of the police. The Office was responsible for investigating allegations of corruption in the civil service. The incident triggered a storm of protest. Students and citizens from many walks of life took to the street to vent their anger over the inability of the Government to solve the problem.

The Government realized that decisive action had to be taken to restore public confidence. Just five days after the flight of the police officer, a senior puisne judge, Alastair Blair-Kerr, was appointed to head a commission of inquiry to investigate the matter. That marked the beginning of a new chapter in the history of anti-corruption efforts in Hong Kong.

Failure to eradicate corruption

As early as 1897, there were laws in Hong Kong against the solicitation or acceptance of bribes by civil servants. In 1948, shortly after the Japanese occupation of Hong Kong ended, the Government enacted the Prevention of Corruption Ordinance. In 1952, the Government established the Anti-Corruption Branch, attached to the police, in an attempt to put a stop to corruption; however, little headway was made in curbing corruption. In 1971, the more powerful Prevention of Bribery Ordinance was enacted. At the same time, the Anti-Corruption Branch of the police was strengthened, becoming the Anti-Corruption Office. Yet corruption in the civil service showed no sign of abating. As some members of the police were alleged to be the most serious offenders, public suspicion concerning the commitment and effectiveness of the Anti-Corruption Office was not without foundation.

Blair-Kerr commented in 1973 that responsible bodies generally felt that the public would never be convinced that the Government really intended to fight corruption unless the Anti-Corruption Office was separated from the police. Subsequently, in October of that year, the Governor of Hong Kong, Sir Murray McLehose, declared that an independent anti-corruption organization was called for. He told the legislature:

> "I believe that it is quite wrong, in the special circumstances of Hong Kong, that the police, as a force, should carry the whole responsibility for action in this difficult and elusive field. I think the situation calls for an organization, led by men of high rank and status, which can devote its whole time to the eradication of this evil; a further and conclusive argument is that public confidence is very much involved. Clearly the public would have more confidence in a unit that is entirely independent and separate from any department of the Government, including the police."

Birth of the Independent Commission against Corruption

A dedicated anti-corruption agency, separate from the police and the rest of the civil service, was established in February 1974, following the enactment of the Independent Commission against Corruption Ordinance.

Born out of government determination and high public expectations, the Commission was under tremendous pressure to deal a devastating blow to corruption. To many, the Commission was faced with an impossible task, given the fact that the forces of corruption were well entrenched. Even the Governor of Hong Kong admitted that nothing short of a "quiet revolution in the society" would have to take place for the Commission to be a lasting success.

Policy makers in the Government had the foresight to provide the new Commission with an integrated, three-pronged anti-corruption strategy, involving investigation, prevention and community education. It was also clearly recognized that the battle against corruption should not be confined to the public sector. The Prevention of Bribery Ordinance outlawed corruption in the private sector as well, for the government did not believe in having double standards. The high expectations of the Commission turned out to be a blessing, as both the Government and the community were prepared to entrust those dedicated to fighting corruption with sufficient resources and legal power to get the job done.

Under the law, the head of the Independent Commission against Corruption was also made directly accountable to the highest authority, ensuring that the Commission maintained its independent status. The Independent Commission against Corruption Ordinance stated that the Commissioner would not be subject to the direction or control of any person other than the Governor [the Chief Executive after 1997].

In addition, under the Ordinance, the Commissioner was empowered:

- To examine the practices and procedures of government departments and public bodies in order to facilitate the discovery of corrupt practices and to secure the revision of methods of work or procedures which, in the opinion of the Commissioner, may be conducive to corrupt practices;
- To instruct, advise and assist any persons, at the latter's request, concerning ways in which corrupt practices may be eliminated by such persons;
- To advise heads of government departments or of public bodies of changes in practices and procedures compatible with the effective discharge of the duties of such departments or public bodies which the Commissioner thinks necessary to reduce the likelihood of the occurrence of corrupt practices;
- To educate the public against the evil of corruption;
- To enlist and foster public support in combating corruption.

This mission of the Commission is reflected in its three functional arms: the Operations Department, the Corruption Prevention Department and the Community Relations Department.

In 2000, the Commission had a total of 1,300 staff and was allocated an annual budget of more than US$ 87 million.

To ensure a high standard of staff integrity, all officers of the Commission (with the exception of a few drafted from other law enforcement agencies during the initial years) are appointed only after vigorous checks have been made concerning their integrity. Contracts are renewed every 30 months only if the performance of the officer concerned has been satisfactory. The contract system was a revolutionary innovation at the time, as people were hoping to obtain lifelong job security by joining the Government.

Under the Independent Commission against Corruption Ordinance, the Commissioner, after consulting the Advisory Committee on Corruption, may summarily dismiss an officer if he is satisfied that it is in the interests of the Commission to do so. Since 1974, when the Commission was established, 59 staff members have been dismissed under such circumstances.

Outstanding results

As mentioned above, the groundwork for the crackdown on corruption was laid on three fronts: investigation, prevention and community education. After decades of hard work, the Commission has been widely recognized as a model of success in solving the problem. It has proved that the battle against corruption can be won if sufficient resources, persistent determination and adequate power to pursue criminal prosecutions exist.

Corruption is a form of crime characterized by "satisfied customers"; there are often no apparent victims. An anti-corruption agency has to rely

on members of the public to come forward and report on acts of corruption. Their willingness to report and, better still, to testify in a court of law, hinges on their trust and confidence in the agency. It is therefore essential for the Commission to be continually aware of the mood of the public. That is achieved by conducting annual opinion surveys, which have been continuously refined over the years, as well as smaller-scale quarterly polls, which keep the Commission informed of sudden shifts in public sentiment. Such surveys enable the Commission to ascertain if there is any need to adjust its strategic priorities.

In the Hong Kong SAR, the revolution in the attitude of the public to corruption has been remarkable. There is evidence of public scorn for corruption, coupled with a readiness to act against it. Some of the findings of surveys commissioned by the Commission are encouraging:

- Over 98 per cent of respondents have expressed support for the work of the Commission since the question was first asked in 1994;
- The level of intolerance towards corruption in both the public and the private sectors has remained high in recent years. In 1998, about 80 per cent of respondents held such a view and a high of 83.7 per cent was recorded in 2000;
- An important barometer of trust is the percentage of reports of corruption filed by persons willing to provide their identities. That figure increased gradually from a low of 35 per cent in 1974 to 56 per cent in 1980 and 70 per cent in 2000;
- The proportion of respondents who agreed that the Commission was impartial in its investigation rose to an all-time high of 74.6 per cent in 2000, up from 56.4 per cent in 1994. In the 2000 survey, only 8.3 per cent of respondents disagreed with that view.

Prerequisites of public support

The public's attitude can never be taken for granted. In the Hong Kong SAR, the transformation of the public's attitude from resigned tolerance of corruption to extreme intolerance has been a slow and painstaking process punctuated by successes and setbacks. Such a massive social campaign is demanding, yet the lessons that can be drawn from it are invaluable. In the context of the Hong Kong SAR, the shaping of a new social order requires the following elements to be in place:

- *Public identification with the cause*. Sustained community education campaigns are needed to raise public awareness of corruption. People should be made aware of the fact that corruption may have dire consequences if left unchecked. They must be convinced that ordinary citizens are in a position to do something about it, both for their own interest and the common

good. They should be shown in concrete terms that corruption only fuels other crimes, to the detriment of the prosperity and economic well-being of the people;

- *Reporting in confidence*. Fear of retaliation discourages people from reporting. The Commission spares no effort to ensure that no one is victimized for reporting corruption. To that end, the Commission has enforced from the start a rule of silence on all reports of corruption. For highly sensitive cases, the Commission has in place a comprehensive witness protection programme that, in extreme cases, enables witnesses to change their identities and relocate;
- *Making corruption a high-risk crime*. Justice must be seen to prevail against corruption. Nothing could send a stronger message to both law-abiding citizens and criminals than being able to bring to justice persons who have committed acts of corruption, regardless of their background or position;
- *Credible checks and balances*. Because of the confidential nature of the work of the Commission and the extensive investigative powers that it enjoys, there is some potential for abuse. Since the inception of the Commission, therefore, an elaborate system of checks and balances has been in place to reassure the public that if any abuse were to occur, the situation would be promptly rectified. The system safeguards the interest of the public by placing prosecution decisions solely in the hands of the Department of Justice. All aspects of the Commission, investigation, prevention, community education and overall management, are supervised by advisory committees comprising respectable citizens appointed by the Chief Executive of the Hong Kong SAR. The committees can discuss with the Chief Executive matters of concern and publish annual reports on their work. Moreover, all non-criminal complaints against officers of the Commission are vetted by an independent complaints committee that publishes its findings annually.

WINNING PUBLIC TRUST

The Commission was established at a time when the Government's determination and capability to fight graft was in doubt. Thus, the Commission had to win back public trust.

The public believes results, not empty slogans. The first Commissioner decided that only through quick and forceful action could public confidence be gained. The civil service as a whole and the police in particular were identified as the primary targets. The successful extradition from London of Peter Godber, a fugitive police officer, and his subsequent conviction within a year gave the Commission a promising start.

High-profile arrests and prosecutions continued to make headlines. That gradually convinced the public that the Government and the Commission meant business. Reports on corruption began to flood in: in the first year, 86 per cent of them concerned government departments and the police. Corruption syndicates in the police, high on the Commission's list of problems to be dealt with, were vigorously pursued. In one major operation mounted during that period, 140 police officers from three police districts were rounded up. More than 200 policemen were detained for alleged corruption at one time. A total of 260 police officers were prosecuted between 1974 and 1977, four times the total number prosecuted in the four years preceding the establishment of the Commission.

In parallel, corruption prevention specialists were dispatched to various government departments to examine their procedures and practices with a view to removing all loopholes for corruption. Assistance was also rendered to help departments produce codes and guidelines on staff conduct. The Corruption Prevention Department was also involved in the early stages of policy formulation and in the preparation of new legislation to obviate opportunities for corruption.

In addition, the Community Relations Department of the Commission has brought about a revolution in the public's attitude towards corruption. Various publicity and outreach programmes have been organized by the Department to educate the public about corruption. The strategies have been refined and adjusted to suit the changing social and economic environment.

Double-barrelled approach in public education

The public education endeavours of the Commission have involved extensive use of the mass media and face-to-face contact. Over the past 25 years, the approach has proved to be effective in instilling a culture of probity.

Mass media

The Hong Kong SAR is known for its free press. There were about 60 printed daily newspapers and more than 700 periodicals in 2000. In addition, there are two free-to-air commercial television stations, one cable network and other satellite-based television services broadcasting news and other programmes on more than 40 domestic and non-domestic channels.

The Commission has realized from the beginning that the mass media is a powerful and indispensable partner in disseminating anti-corruption messages. A news story about a person convicted of corruption has a significant impact on the community. A press information office was one of the first units established by the Commission. Acting as a bridge between the Commission and the press, the office regularly issues press releases on the operations of the Commission and arranges interviews and briefings by officers of the Commission to hammer home the message that corruption is evil. Media reports on crimes involving corruption can have a deterrent effect.

Advertising campaign

In addition, the Commission produces its own "announcement of public interest" to proactively articulate a culture of probity through advertising campaigns. The messages are tailored to suit the prevailing public sentiment and social climate. The messages of the past 27 years can be seen to have had four phases:

- *The era of awakening*. In its early years, the Commission had to deal with a population that was deeply suspicious of the Government's commitment to fighting corruption. People on lower incomes, who were more vulnerable to abuse, held a particularly tolerant view of such crime. Media campaigns were launched to reach that sector of society and highlight their suffering. Backed with tough law enforcement action, the Commission urged the public to become a partner in fighting corruption by reporting such crime;

- *Level playing field*. As syndicated corruption in the police and the civil service diminished by the late 1970s, the Commission was able to channel more of its energy into dealing with the problem of corruption in the private sector. In the midst of an economic upturn, the Commission emphasized that the fight against corruption was important to the continued economic growth of Hong Kong. Elements of deterrence and persuasion were included in those campaigns. The slogan used by the Commission, "Whichever way you look at it, corruption doesn't pay", reverberated loud and clear in the community. Tough action against some private corporations and their senior managers during the period reinforced the warning by the Commission that it was not making an empty threat;

- *The 1997 jitters*. During the years of transition leading to the reunification of Hong Kong and mainland China in 1997, some people in Hong Kong were worried about the uncertain future. After all, the concept of "one country, two systems" was without precedent anywhere in the world. It was suspected that certain individuals would try to take advantage of the situation to get rich fast, despite the large number of cases involving corruption that were being reported. There were some doubts in the community about the ability and the effectiveness of the Commission to keep Hong Kong one of the least corrupt places in the world after reunification. To counter those concerns, the Commission set out to reassure the general public, through media campaigns, that the corruption of the 1960s and 1970s would not return as long as the public continued to cooperate in tackling the problem;

- *The mission continues*. After a long period of economic prosperity, coupled with the gradual reduction of reports of corruption, the social ill that once plagued the city has in recent years gradually faded. The prevailing social environment is such that there is some danger that the level of alertness may drop, particularly among members of the younger generation who have never experienced corruption. They may take it for granted that corruption is no longer a threat and may have trouble comprehending the fact that parents and grandparents fought a fierce battle to free the Hong Kong SAR from corruption. To the Commission, it is important that the next generation should be made aware of the need to continue anti-corruption efforts. In recent years, a large share of the educational resources has gone to fostering integrity and honesty among youth. That will continue to be the case in the years to come.

Television drama series

Shortly after its inception, at a time when television was the most powerful media for reaching the masses, the Commission started producing television drama series based on real corruption cases. The television drama series turned out to be an astounding success and to date it remains one of the most popular television programmes, its ratings comparable to those of commercial productions. In these biennial television series, the dire consequences of corruption are vividly portrayed and the professionalism and efficiency of the officers of the Commission are effectively conveyed. To ensure that the work of the Commission is accurately reflected, the actors portraying officers of the Commission are asked to dress, talk and carry out their investigations in a manner that is as close to real life as possible.

The Internet

The cyber revolution has provided the Commission with another potent medium for interactive communication with the community. Internet surfers can gain access to the Commission in the virtual world and obtain "best practice" packages for specific trades and industries and practical guides on how to deal with ethical dilemmas and difficult situations in individual branches of industry. The web site of the Commission also contains information on the corruption cases that it has dealt with over the years.

As Internet browsing has become one of the most popular hobbies among members of the younger generation, the Commission has also launched a web site for teenagers, through which interactive games and information are used to impart positive values to young people.

Face-to-face contact

Despite the immense influence the media has in reaching the masses, the Commission believes that it is no substitute for face-to-face contact with the people it serves. As a mode of communication, face-to-face contact is best suited to explaining the goals and mission of the Commission and to obtaining feedback on its work. The Commission uses a strategic network of regional district offices to maintain direct contact with members of various sectors of the community. The offices serve as focal points of contact with local community leaders and organizations with whom the Commission's regional officers organize various activities to disseminate the anti-corruption messages. The regional offices hold regular meet-the-public sessions to gauge public views on various corruption issues. They are manned by persons trained to deliver the Commission's messages to different sectors of the community and can also serve as report centres. Members of the public can walk in and lodge a complaint about corruption. Experience shows that people usually feel more at ease in providing details pertaining to their complaints in less formal settings.

In conducting their liaison work, community relations officers also adopt a focused approach, targeting certain sectors of the community. Tailor-made briefings and training sessions are offered to civil servants and those practising specific trades in the private sector, in order to raise their awareness of the anti-corruption law and the problems associated with corruption.

Educational programmes are arranged to develop an anti-corruption culture among young people and newly arrived immigrants.

Community relations officers reach between 200,000 and 300,000 people on average per year, through 800 talks, activities and special projects. The 200 staff members meet with members of the community at meet-the-public sessions, and during training workshops at workplaces, school talks and seminars designed for businesses and professionals.

Current situation with regard to corruption

Corruption in the Hong Kong SAR is under control. While no Government can expect to eradicate corruption completely, the improvements that have been achieved in the area of integrity are encouraging. The efficiency and honesty of the civil service have been acknowledged by the world community and syndicated corruption is a thing of the past.

The various types of complaint made reveal changes in the social culture and public attitudes. Complaints involving corruption in the civil service accounted for 86 per cent of the total in 1974; that figure dropped to 60 per cent in 1980 and less than 40 per cent in 2000. Reports on alleged police corruption plunged from 45 per cent of the total in 1974 to 30 per cent in 1984 and to less than 14 per cent in 2000.

Complaints involving corruption in the private sector accounted for 13 per cent of the total in 1974, 37 per cent in 1984 and 54 per cent in 2000. That increase was attributed largely to the growing public intolerance of corruption in the private sector and, to a greater extent, to the realization within the business community that corruption was bad for business.

Despite strong resistance to the Commission in the 1970s, entrepreneurs have gradually come to understand that bribery has an adverse effect on business. Consequently, their resistance has changed to acceptance and even active support of the Commission. In 1995, six major chambers of commerce, together with the Commission, helped found the Hong Kong Ethics Development Centre to promote ethics and corporate governance. Nowadays, nearly 10 per cent of reports of corruption in the private sector are made by senior business managers.

Conclusion

Fighting corruption is an ongoing battle. The public needs to be constantly assured that the Commission is capable of carrying out its work effectively, without fear or favour. The Commission is keenly aware of the continued need to maintain its level of professionalism in the face of the growing sophistication of criminal groups, aided in part by the globalization of trade and the digital revolution.

The extremely low incidence of corruption in the Hong Kong SAR is not solely the result of the establishment of the Commission. Some of the more important factors that have played a role are the following:

- *A holistic approach to the problem*. The three-pronged strategy of investigation, prevention and community education has enabled the Commission to tackle the problem at its source;
- *A supportive public*. A supportive public makes it possible for the battle against corruption to be fought on all fronts, in every corner of the community. Without a supportive public, regardless of the human and financial resources involved, it would not have been possible to reduce corruption so quickly;
- *The rule of law*. The people of the Hong Kong SAR have treasured, respected and guarded the rule of law. That is important to efforts to convince the public that justice will be done;
- *Government commitment*. The commitment of the Government has been demonstrated by the provision of sufficient resources and adequate legal powers to hunt down the criminals involved in corruption.

The Hong Kong SAR has sucessfully demonstrated that corruption can be contained. The Independent Commission against Corruption continues its task of ensuring it remains under tight control in the future.

For a global approach to fighting corruption: Colombia's steps towards transparency

By Héctor Charry Samper[1]

The oft-quoted aphorism of Lord Acton, "Power corrupts and absolute power corrupts absolutely", is a historically proven truth. Open systems, the enjoyment of liberties, respect for institutional limits and genuine democratic procedure undoubtedly constitute progress towards countering corruption, but can one be blind to the spread of corruption in powers that are not absolute, in flourishing societies or States firmly founded on the rule of law?

It is the insidious, mobile aspect of corruption that makes combating it a challenge for all to meet; it is essential to formulate a response and be committed to it. The list of legal instruments on corruption is impressive. And there can be no justification at this point for bringing down the minimum standards already adopted, not even for the sake of achieving their supposed universalization or increasing the chances of their being ratified.

Corruption breeds in an opaque and clandestine world; it must be combated by cultivating transparency and integrity. Setting aside legitimate argument over its important ideological and practical implications, globalization is a fact of life deriving from formidable technical and scientific developments that have a tangible daily reality. The task ahead is formidable and multifaceted, but its one unifying element should be the conception, development and negotiation of a convention against corruption. This is not a case of simply adding yet another text to those which exist already, albeit one with a broader geographical scope. Goals must be set that are greater than those of the past; the doors must be thrown wide open to a global and sustained effort. In a kind of collective catharsis, States need to rally together to bring about a profound change in behaviour. They must reach beyond their natural differences and the diversity of their situations; they may require internal adjustment, a strengthening of controls, a reform of practices and more effective and more extensive international cooperation among government institutions and private agencies alike.

For many years now, governance standards have existed and, except perhaps in certain countries, there have even been institutions in place.

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[1]Chairman of the Ad Hoc Committee for the Negotiation of a Convention against Corruption, Permanent Representative of Colombia to the United Nations Office (Vienna) and other international organizations, former Minister of Justice of Colombia.

However, it would be wrong to deny the clear evidence that, to a greater or lesser degree, what is known as corruption is gaining ground; it is even encroaching on the agencies and institutions designed to contain it, such as parliamentary assemblies, the judiciary and regulatory bodies. The fragility of law unaccompanied by will is wont to create vast distances that tend to make sceptics of citizens the world over.

Cultural differences must be recognized and respected and specific conditions must be examined in order that common denominators capable of improving the situation can be identified. There is a need to affirm certain ethical principles, a scale of values that forms a common bedrock underlying different cultural currents. These enrich what can be seen as common civilization, a common identity that can be found through action undertaken together.

The overlap of the public and private spheres and even at times their confusion appear to be one of the defining features of our time. The growing trend of transnational crime includes corruption and necessitates a sharing of responsibilities. In the seventeenth century, the poet and nun Sor Juan Inés de la Cruz, although writing about prostitution rather than corruption, asked:

> Or who is more to blame,
> Though both of them do ill,
> She who sins for pay,
> Or he who pays to sin?

An additional effort to combat corruption will be required of international organizations such as the United Nations and the Bretton Woods organizations (the World Bank, International Monetary Fund and the World Trade Organization), and of regional systems and the new integration arrangements, of the public sector and private enterprise, of the churches and the media, of civil society and political parties. The financial and banking institutions and multinational corporations will also be called upon to step up their efforts to prevent corruption, combat it and eliminate it as a global phenomenon.

The fight against corruption as a global civic duty

No country, whether developed or developing, is immune to corruption and each can offer clues as to how best to deal with it. What is essential is to take action against it, to reject the idea that it is an inevitable condition to which people are condemned.

No matter how far advanced the problem of corruption is, it can be fought. It hurts everyone, and it is up to each person to oppose it by adopting an approach that is at once consensual, idealistic and pragmatic. It is useless to hope for miracle formulas or instant solutions.

Secretary-General Kofi Annan (2002) was right in stating in his address to the Preparatory Committee for the International Conference on Financing for Development at its fourth session, held in New York from

14 to 25 January 2002, that for the International Conference to be a success, "it must strengthen and sharpen the consensus that now exists on the policies, mechanisms and institutional frameworks which are required, within the developing countries, to mobilize domestic resources, as well as to attract and benefit from international private capital flows—and particularly from foreign direct investment. Agreement to conclude a comprehensive international convention against corruption—providing, for example, for the repatriation of illegally transferred funds—would also be a major step forward".

That should strengthen the resolve in tackling the different types of corruption that exist in all societies. What is appearing now are anti-models of corrupt conduct that strike not only at moral standards, but also at the very governability of a country, producing destabilizing effects that are quantifiable in terms of gross domestic product and that undermine the best models and paradigms.

There is a need to work towards the creation of a universal culture of international responsibility, a global civil duty.

Individual efforts: the Colombian national strategy against corruption

The global battle against corruption is the sum of the approaches of individual States. In the case of Colombia, the challenge facing the Administration is how best to foster an effective and efficient local government and a judicial system of integrity. The only option for Colombia, as for any sovereign State, appears to be to strengthen the institutional anti-corruption framework in order to contribute indirectly to the prevention of abuses of public office for personal benefit and to break the cycle of interaction between the public and private sectors.

The Government of Colombia has made anti-corruption reforms one of its policy priorities by establishing a presidential programme against corruption. Similar programmes have been developed by institutions such as the General Prosecutor's Office (Fiscalía General), the Solicitor General's Office (Procuraduría), the Auditor General's Office (Contraloría) and the Bogotá Chamber of Commerce, which is a private effort. Although the anti-corruption initiatives taken by the Government so far have been substantive and laudable, key areas such as the judicial branch and the administration of the issuing of permits, public health and public education lack effective management and social control.

The implementation of social control mechanisms through close collaboration with the judicial system, the executive and legislative branches and other control agencies is also a technical issue to be addressed. Those mechanisms are the key to building trust in public institutions among the population in general, and transparency in the relations between the State and private citizens in particular. Their implementation would increase political stability and good governance, both essential preconditions for lasting economic, social and political development.

A case of international cooperation against corruption

Within the framework of the global programme against corruption, the Government of Colombia requested the Centre for International Crime Prevention to assist it in incorporating best governance practices in local and national public policies at key government institutions, who then created a pilot corruption programme. That assistance is based on a strong pre-existing foundation that includes political will, which at the same time has the technical capacity to execute reforms and a strong operational partnership with civil society. A memorandum of understanding was signed on 1 May 2001 by the Minister of Foreign Affairs of Colombia and the Director of the Centre for International Crime Prevention. The elements of the programme were developed in close collaboration with the presidential programme against corruption and with the Ministry of Foreign Affairs. Other authorities within the executive, legislative and judicial branches also provided useful inputs.

The aim of the programme is to create a national integrity committee composed of the leading members of every sector of Colombian society and the State who will orient the national policy against corruption and act as points of contact for the international organizations. It is intended that the committee should adhere to the following principles:

- *Integrity*. The members of the committee must be perceived by the general public to have a high level of credibility;
- *Representation*. The members of the committee should be chosen from those working within the main entities of the public sector and those involved in the fight against corruption from the private sector, including the church and youth;
- *Independence and stability*. The committee must be independent of the Government and political parties, and must not be affected by any changes in government.

The objective of the committee is to address the institutional weaknesses that foster corruption at the local level and that have implications for the public sector nationwide. The pilot programme is to deal with the precarious situation in the provision of public services, including the maintenance of law and order, starting at the level of local government, which has strong implications for future reform at the national level. The provision of public services by local governments through the judicial, legislative and executive branches directly affects the quality of life and the security of the population. In order to improve the institutional effectiveness of local government as the provider of public services, the joint project will address the inadequate integrity and capacity of a significant number of public officials in their interaction with the general public.

There is a lack of capacity at the local government level and within the executive, legislative and judicial branches as a whole to deal with the eradication of corrupt practices. This is linked to the difficulties

experienced by the State in establishing a result-based public sector management system based on social control mechanisms. The stakeholder-endorsed anti-corruption action plans for improving integrity that had previously been established with the assistance of various national and international institutions such as the World Bank have suffered from insufficient operational capacity at the grass-roots level within the executive, the judicial and, in particular, the legislative branches.

The information about the types, levels, cost, causes and remedies of corruption required for evidence-based planning will be obtained through assessments of the capacity and integrity of three local governments, in Ibagué, Manizales and Pasto, which will include: a desk review of all information regarding corruption at the local government level; face-to-face interviews with mayors, judges, lawyers and prosecutors; opinion surveys with court users; case studies of examples of corruption among local officials from the executive, legislative and judicial branches; an assessment of the rules and regulations governing the behaviour of public officials; a review of the institutional and organizational framework of the criminal justice system at the local level; and an assessment of survey-based frequencies of perceived institutional quality and corrupt practices.

The three pilot jurisdictions were selected by following unbiased technical requirements that included assessments of their political willingness to execute reforms within a relatively short period and the capacity of civil society to actively support those reforms. They were chosen after consultation with the presidential programme against corruption and the Ministry of Foreign Affairs, thus demonstrating the political willingness of Colombia's highest authorities to implement institutional reforms. The executive, legislative and judicial sectors in the three local governments have formally agreed to participate in the pilot programme. It is hoped that the immediate beneficiary will be civil society.

The experience of Colombia serves to illustrate why the global battle to eliminate corruption needs to be waged on the historical, social, economic and cultural fronts. Despite the difficulties involved, people from all segments of society must dedicate themselves to this effort, for to do so is, in effect, a civic duty on a global scale. Success in the endeavour will not only improve the efficiency of government, but will also have tangible benefits in terms of gross domestic product and quality of life. The fight against corruption must be a policy of the State rather than of a Government, which could fine-tune it, when necessary, to make it more effective and holistic.

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The negotiation of the draft United Nations Convention against Corruption

By Dimitri Vlassis[1]

The question of drafting a convention against corruption was raised for the first time during the negotiations on the United Nations Convention against Transnational Organized Crime. The Ad Hoc Committee that carried out those negotiations debated whether corruption should be covered by that Convention. The view that prevailed was that, although corruption was too complex and broad an issue to be covered exhaustively by a convention dealing with transnational organized crime, that Convention would not be complete without source provisions on corruption, because corruption was both a criminal activity in which organized criminal groups often engaged and a method used by those groups to carry out other criminal activities. The Ad Hoc Committee therefore agreed on the inclusion of only limited provisions on corruption in the United Nations Convention against Transnational Organized Crime, on the understanding that the drafting of a separate instrument covering corruption would be considered to cover corruption. The United Nations Convention against Transnational Organized Crime (General Assembly resolution 55/25, annex I) contains an article on the criminalization of corruption and an article on measures against that criminal activity. The article on the criminalization of corruption includes a basic definition of public officials, essentially deferring to national law.

In its resolution 55/61 of 4 December 2000, the General Assembly decided to establish an Ad Hoc Committee for the Negotiation of a Convention against Corruption. In that resolution, the Assembly also outlined a preparatory process designed to ensure the widest possible involvement of Governments through intergovernmental policy-making bodies. The Assembly also requested the Secretary-General to prepare a report analysing existing international legal instruments and to submit it to the Commission on Crime Prevention and Criminal Justice. The Assembly further requested the Commission to review and assess the report of the Secretary-General at its tenth session, in 2001, when its thematic discussion was on the progress made in global action against corruption. The Assembly also requested the Secretary-General to convene an intergovernmental open-ended expert group to prepare draft terms of reference for the

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negotiation of the new legal instrument against corruption, taking into account the report of the Secretary-General and the recommendations of the Commission at its tenth session. The expert group was requested to submit the draft terms of reference for the negotiation of the legal instrument against corruption to the Assembly, through the Commission and the Economic and Social Council, for adoption.

At the time that the General Assembly was considering the draft resolution that subsequently became resolution 55/61, Nigeria, on behalf of the Group of 77 and China, proposed a draft resolution on the illegal transfer of funds and the repatriation of such funds to their countries of origin. As originally proposed, the draft resolution would have called for the negotiation of a separate instrument on that subject. Through negotiation, the two draft resolutions were brought into line. Thus, the draft resolution on the illegal transfer of funds became resolution 55/188, in which the Assembly invited the Intergovernmental Open-Ended Expert Group to prepare draft terms of reference for the negotiation of an international legal instrument against corruption to examine the issue of illegally transferred funds and the repatriation of such funds. That new mandate placed the issue of asset recovery within the framework of the future convention against corruption.

The sensitive and complex nature of asset recovery became evident during the tenth session of the Commission on Crime Prevention and Criminal Justice, when a draft resolution on that subject was considered. During the debate on the draft resolution, asset recovery was maintained as one of the key issues to be covered by the future convention against corruption and the terminology concerning the issue evolved. The draft resolution later became Economic and Social Council resolution 2001/13 on strengthening international cooperation in preventing and combating the transfer of funds of illicit origin, derived from acts of corruption, including the laundering of funds, and in returning such funds.

The meeting of the Intergovernmental Open-Ended Expert Group was held in Vienna from 30 July to 3 August 2001. In September 2001, the Commission, at its resumed tenth session, on the recommendation of the Intergovernmental Open-Ended Expert Group, approved, for adoption by the General Assembly a draft resolution on the terms of reference for the negotiation of an international legal instrument against corruption. The draft resolution was later adopted by the Assembly as resolution 56/260 of 31 January 2002.

In resolution 56/260, the General Assembly decided that the Ad Hoc Committee should negotiate a broad and effective convention which, subject to the final determination of its title, should be referred to as the "United Nations Convention against Corruption". The Assembly requested the Ad Hoc Committee, in developing the draft convention, to adopt a comprehensive and multidisciplinary approach and to consider, inter alia, the following indicative elements: definitions; scope; protection of sovereignty; preventive measures; criminalization; sanctions and remedies; confiscation and seizure; jurisdiction; liability of legal persons; protection of witnesses and victims; promoting and strengthening international cooperation; preventing and combating the transfer of funds of illicit origin derived

from acts of corruption, including the laundering of funds, and returning such funds; technical assistance; collection, exchange and analysis of information; and mechanisms for monitoring implementation. The Assembly also invited the Ad Hoc Committee to draw on the report of the Intergovernmental Open-Ended Expert Group, on the report of the Secretary-General on existing international legal instruments, recommendations and other documents addressing corruption (E/CN.15/2001/3 and Corr.1), as well as on the relevant parts of the report of the Commission on Crime Prevention and Criminal Justice on its tenth session, and in particular on paragraph 1 of Economic and Social Council resolution 2001/13 as resource materials in the accomplishment of its tasks. The Assembly requested the Ad Hoc Committee to take into consideration existing international legal instruments against corruption and, whenever relevant, the United Nations Convention against Transnational Organized Crime. The Assembly decided that the Ad Hoc Committee should be convened in Vienna in 2002 and 2003, as required, and should hold no fewer than three sessions of two weeks each per year, according to a schedule to be drawn up by its bureau, and requested the Ad Hoc Committee to complete its work by the end of 2003. The Assembly accepted with gratitude the offer of the Government of Argentina to host an informal preparatory meeting of the Ad Hoc Committee prior to its first session.

The Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption was held in Buenos Aires from 4 to 7 December 2001. In preparation for that meeting, Governments were invited to submit proposals for the future convention. The purpose of the Informal Preparatory Meeting was to consolidate proposals made by Governments, in order to pave the way for the work of the Ad Hoc Committee. The Informal Preparatory Meeting had before it 26 proposals, submitted by Governments of countries in all regions of the world. Some of the proposals contained full texts for the draft convention, while others offered more general observations and comments regarding the content of the draft instrument or the methodology to be followed in the negotiations. The fact that the proposals were so numerous and diverse was evidence of the interest of States in all regions in being actively involved in the negotiating process. Those elements should ensure the comprehensiveness, high quality and universality of the final product of the negotiations, which will be essential to its effectiveness, acceptance and success as an international legal instrument. The Informal Preparatory Meeting consolidated all proposals on the text of the draft convention in a single document to be used by the Ad Hoc Committee as the basis of its work.

At its first session, held in Vienna from 21 January to 1 February 2002, the Ad Hoc Committee began its first reading of the draft United Nations Convention against Corruption, covering articles 1-39 of the draft text. During the first reading, four key issues emerged:

(a) The definition of "public official". The debate revolved around how broad this definition should be and whether the future Convention should

contain an "autonomous" definition or whether the definition should be left to national law. It was pointed out that a third option might be to have a definition in the future Convention to set the standard and allow countries to expand it if they wished;

(b) The definition of "corruption". The debate centred on how broad this definition should be. An interesting proposal made during the first session of the Ad Hoc Committee was not to include a specific definition in the future Convention, but to approach the issue through the criminalization provisions, that is, to have the future Convention establish certain acts of corruption as criminal offences. An equally interesting discussion related to whether agreement should be sought first on the definition of corruption or on the offences to be established. That discussion provided a hint of the more central question of what States wished the future Convention to be and to accomplish. Criminalization would be more important to a convention intended as a tool for international co-operation, while a convention negotiated for the purpose of setting standards might not give the same weight to criminal law;

(c) The question of whether private sector corruption should be included in the convention. Most States expressed a strong preference for a convention that would cover corruption in the private sector. For some other States the matter was very complex, creating many conceptual, legal and procedural problems, to which there might not be globally acceptable solutions;

(d) The question of how extensive and binding the provisions on prevention should be. The current draft convention includes extensive provisions on prevention. The debate appears to be related to the expected nature and intended accomplishments of the future convention, as indicated above. One issue that appeared to be settled was whether there should be an annex to the convention containing the International Code of Conduct for Public Officials (General Assembly resolution 51/59, annex). The legal significance of an annex to a binding international legal instrument such as a convention, together with the consequent need to subject such an annex to negotiations of the same rigour as for the main text, led to a preliminary decision not to include an annex to the draft convention but to make a reference in the text of the convention to the resolution in which the Assembly adopted the Code of Conduct.

The Ad Hoc Committee is expected to complete its first reading of the draft convention at its second session, to be held in Vienna from 17 to 28 June 2002.

Pursuant to the decision of the Ad Hoc Committee at its first session and following a proposal by the Government of Peru, the Centre for International Crime Prevention of the Office on Drugs and Crime will organize a one-day technical workshop on asset recovery during the second session of the Ad Hoc Committee. The purpose of the workshop is to provide interested participants with technical information and specialized knowledge on the complex issues involved in the question of asset

recovery. The workshop will therefore not lead to any formal conclusion. The bureau of the Ad Hoc Committee has approved the programme and format of the workshop.

After holding its second session in June 2002, the Ad Hoc Committee will continue its work in four more sessions planned for 2002 and 2003. The negotiating process is bound to become more intricate as the Ad Hoc Committee enters the phase of seeking consensus on specific concepts and provisions. It would be premature to attempt to predict the direction or outcome of the negotiations. Even at this early stage, however, there is ample cause for optimism. A spirit of commitment and willingness to cooperate and seek solutions to all possible problems prevailed during the first session of the Ad Hoc Committee. That spirit, if it continues, should ensure the functionality and quality of the future convention.

Forum on crime and society

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To help ensure quality control and reader satisfaction, *Forum* readers are requested to complete the questionnaire below and send it to Antoinette Al-Mulla, Managing Editor of *Forum*, by fax ((431) 26060-5898) or by mail (United Nations, P.O. Box 500, A-1400 Vienna, Austria).

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   ☐ Strongly agree

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