ANTI-CORRUPTION COMMUNITY OF PRACTICE IN THE ARAB REGION

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The Interplay with other Anti-corruption Authorities: Challenges and Risks

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"Corruption hurts the poor disproportionately by diverting funds intended for development, undermining a government's ability to provide basic services, feeding inequality and injustice, and discouraging foreign investment and aid".

„Corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life, and allows organized crime, terrorism and other threats to human security to flourish."

Kofi Annan, Former United Nations Secretary-General

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INTRODUCTION

In the last years corruption has become a global threat not only for the economic development of the countries themselves and their international relations, but also for the global economy and politics. The different forms of misuse of power for personal or group interest at the expense of society are especially damaging in the countries of transition, which are forced to build at the same time the new democratic institutions and to create the prerequisites for a market economy. As a complex phenomenon corruption is the opposite of free competition in the economic field, discourages entrepreneurship, stimulates the grey economy and economic crime, diminishes the quality of public services and makes the social burden of transition harder. In this way, corruption enlarges the gap between rich and poor in the framework of transition to a market economy and becomes a direct threat to the democratic foundations of society. In order to counter corruption a modern legal framework of administrative activities and public service on a national scale has to be established. The strategy implies managerial and organizational development and clear-cut regulation of interrelations between government authorities on the one hand, and the private sector and citizens, on the other.

In this essay we seek to determine the theoretical and empirical bases for the assertion that anti-corruption authorities play a significant role in the creation a common institutional and legal environment for curbing corruption on a national scale. The objectives include the definition of the role of already existing institutions and a creation of new ones in order to guarantee a clear and transparent interplay among the diverse actors of a determined country. We should try to understand the impact of the national institutions and services in the fight against corruption. What steps, if any, can be taken to encourage the emergence of the anti-corruption institutions and the challenges and risks they face? Why do domestic legal institutions matter in the battle against corruption? We will try to lay out the main goals of prevention and the means to be employed towards their attainment, in accordance with the fundamental principles of domestic law. Finally, we will argue that domestic institutions remain important even in a globalized world.

This paper focuses on the United Nations Convention Against Corruption with was established in 2003 and ratified in 2005 and more specifically, we will analyze its

- **Articles 5: Preventive anti-corruption policies and practices**
- **Article 6: Preventive anti-corruption body or bodies**
- **Article 36: Specialized authorities**

MANDATORY PRINCIPLES ON A NATIONAL SCALE

In order to achieve these objectives, activities in the following directions have to be considered:

The principle of **rule of law**, according to which it is consecrated the supremacy of the law, all citizens being equal before it and which is based on the respect of the human rights and requires the separation of state powers;

The principle of **good governance**, according to which each government must establish clear, effective actions, based on well established and quality objectives and have the capacity and flexibility to respond rapidly to the social needs;

The principle of **responsibility**, which imposes the obligation for each government to formulate public policies, to be responsible for their implementation and efficiency, to accept and be accountable for the fulfillment of this obligation;

The principle of **prevention** of corruption acts, according to which the anticipated identification and timely elimination of the premises for the appearance of corruption acts are imperative and have priority;

The principle of efficiency in **countering** corruption, based on the continuous assessment of the national activity in what regards the concrete results and institutional management;

The principle of **cooperation and coherence**, according to which the institutions involved in preventing and countering corruption must cooperate closely, ensuring a coherent conception of the objectives to be fulfilled, and the measures to be taken;

The principle of **transparency, consultation of the civil society and social dialogue**, which imposes, on one hand, the transparency of the decision-making process, and on the other hand, the consultation of the civil society;

The principle of **public-private partnership**, which recognizes the importance of involving the civil society in the concrete activities of implementation of the measures of corruption prevention.

THE INTERNATIONAL FRAMEWORK: UN CONVENTION AGAINST CORRUPTION

Scope of the Articles

Preventive Anti-corruption policies and practices[2]

The prevention of corruption is more effective in environments that minimize opportunities, encourage integrity, allow transparency, enjoy strong and legitimate normative guidance and integrate the efforts of the public sector, the private sector and civil society.

However, most of the international instrument can be considered as "soft law"- a practical tool that enables the establishment of general goals and helps the flexibility in the implementation of international conventions and treaties on a national scale without violating the sovereignty of each State. This process aims to facilitate the ratification of the convention and guaranties that the international rules are incorporated into national law, and thus can be invoked by private actors in national courts and agencies**.** This implies also that States have to fulfill diverse obligations and create the required authorities and thus turn the "soft" international regulation toward "hard" national law in order to respect the terms of the convention.

Article 5 of the UN Convention against Anti-Corruption goes on to underline the significance of prevention; the need for continuous assessments of existing anti-corruption practices. The articles that follow illustrate how these general principles can be implemented in accordance with the fundamental legal principles of States parties.

[2] Legislative Guide for the implementation of the United Nations Convention against corruption, New York 2006.

Article 5 requires practices rather than legislation. It provides a basis for article 6 and a preamble for Chapter II of the Convention.

Article 6 is not intended to refer to the establishment of a specific agency at a specific level. What is needed is the capacity to perform the functions enumerated by the article.

Article 5. Preventive anti-corruption policies and practices[3]

1. Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.

2. Each State Party shall endeavour to establish and promote effective practices aimed at the prevention of corruption.

3. Each State Party shall endeavour to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption.

4. States Parties shall, as appropriate and in accordance with the fundamental principles of their legal system, collaborate with each other and with relevant international and regional organizations in promoting and developing the measures referred to in this article. That collaboration may include participation in international programmes and projects aimed at the prevention of corruption.

Article 6. Preventive anti-corruption body or bodies

1. Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate,that prevent corruption by such means as:

(a) Implementing the policies referred to in article 5 of this Convention and, where appropriate, overseeing and coordinating the implementation of those policies;
(b) Increasing and disseminating knowledge about the prevention of corruption.

2. Each State Party shall grant the body or bodies referred to in paragraph 1 of this article the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material resources and specialized staff, as well as the training that such staff may require to carry out their functions, should be provided.

3. Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that may assist other States Parties in developing and implementing specific measures for the prevention of corruption.

[3] United Nations Convention Against Corruption, New York, 2006.

Article 36. Specialized authorities

Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.

In accordance with **Article 5**,

States parties are required:

(a) To **develop** and **implement** or **maintain effective anti-corruption policies** that encourage the participation of society, reflect the rule of law and promote sound and transparent administration of public affairs (para. 1);

(b) To **collaborate** with each other and relevant **international and regional** bodies for the pursuit of the above goals (para. 4).

In accordance with **Article 6,**

States parties are required:

(a) To have **an anti-corruption body or bodies** in charge of preventive measures and policies (para. 1);

(b) To **grant that body independence** to ensure that it can do its job unimpeded by undue influences and provide it with **adequate resources** and **training** (para. 2).

Article 5 does not introduce specific legislative requirements, but rather mandates the commitment of States parties to develop and maintain a host of measures and policies preventive of corruption, in accordance with the fundamental principles of their legal system.

This can be considered as a rather very general principles but it leaves States to exercise the exclusive and autonomous competency of its sovereignty, namely to decide the scope of its own rights and limits, the monopole of its legislation and finally the establishment of its national authorities in order to create national anti-corruption guidelines.

Under **Article 5, paragraph 1**, the requirements are to **develop, implement and maintain effective, coordinated measures that**:

(a) Promote the participation of the wider society in anti-corruption activities; and

(b) Reflect the principles of:

- The rule of law
- Proper management of public affairs and public property
- Integrity
- Transparency
- Accountability

These general aims are to be pursued through a range of mandatory and optional measures outlined in subsequent articles of the Convention.

Article 5, paragraph 4, requires that, in the pursuit of these aims, as well as of general prevention and evaluation of implemented anti-corruption measures, States parties collaborate with each other as well as with relevant international and regional organizations, as appropriate and in accordance with their fundamental principles of law and sovereignty.

Article 6 requires the **establishment or maintenance of a body or bodies**, in accordance with the fundamental principles of each **State's legal system**, **charged with the prevention of corruption** by:

(a) Implementing policies and measures mandated by article 5, subparagraph *(a);*

(b) Where appropriate, overseeing and coordinating the implementation of such policies. This oversight and coordination would be most critical in cases where more than one body has responsibilities relative to the prevention of corruption;

(c) Creating and disseminating knowledge about the prevention of corruption.

Article 6, paragraph 2, requires that States endow the body in charge of preventive policies and measures with:

(a) The "independence" to ensure it can do its job unimpeded by "undue influence", in accordance with the fundamental principles of their legal system;

(b) Adequate material resources and specialized staff and the training necessary for them to discharge their responsibilities.

The Convention does not mandate the creation or maintenance of more than one body or organization for the above tasks. It recognizes that, given the range of responsibilities and functions, it may be that these are already assigned to different existing agencies.

The establishment of an anti-corruption body may require legislation.[4] The body or bodies referred to in Article 6 may be the same as those referred to in Article 36, which deals with law enforcement anti-corruption functions. These bodies may have the authority to receive allegations of corruption and in some cases may have the authority to investigate corruption-related offences.[5]

Several articles of the Convention refer to the institutional framework required for an effective implementation of the Convention. Article 6 requires States parties to establish or maintain an anti-corruption body or bodies entrusted with preventive functions. Article 36 (Specialized authorities) requires States parties to "ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement".

In addition, paragraph 13 of Article 46 (Mutual legal assistance) mandates the designation by States parties
of a central authority competent to receive requests for mutual legal assistance; and article 58

[4] See art. 5, para. 3, of the African Union Convention on Preventing and Combating Corruption and art. 4, para. 1 *(g)* of the Southern African Development Community Protocol against Corruption.

[5] This is the case, for example, with the Independent Commission against Corruption of Hong Kong Special Administrative Region of China.

(Financial intelligence unit) obliges States parties to consider establishing a Financial Intelligence Unit (FIU) responsible for receiving, analyzing and disseminating reports of suspicious financial transactions.

Note that States might have other requirements to address under other international instruments or standards. For instance, under Article 11 of the OECD Bribery Convention, parties to that Convention are also required to designate an authority for making and receiving requests for extradition.[6]

While the Convention deals with preventive and law enforcement functions and corresponding bodies under different articles (Articles. 6 and 36 respectively), States parties may decide to entrust one body with a combination of preventive and law enforcement functions.

For example, the Independent Commission against Corruption of Hong Kong Special Administrative Region of China is entrusted with the running of public-awareness campaigns but also with the investigation of allegations of corruption and the auditing of government agencies from an anti- corruption perspective.

Under Lithuanian law, the Special Investigations Service also combines preventive and investigative functions. In other cases, the office of the ombudsman assumes the functions of an anti-corruption agency, including prosecution functions.

Public confidence and accountability in public administration are instrumental to the prevention of corruption and greater efficiency.[7]

Measures to respond to this general obligation may include the following:

(a) Introduction of rules and procedures for members of the general public to obtain information:

- on the organization, functioning and decision-making processes of their public administration, when appropriate, and
- on decisions and legal acts that concern members of the public, with due regard for the protection of privacy and personal data.

In this specific task of protecting personal information, national drafters may wish to draw on "*principles laid down in the guidelines for the regulation of computerized personal data files adopted by the General Assembly in its resolution 45/95 of 14 December 1990*" (A/58/422/Add.1, para. 14);

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[6] See also recommendation 26 of the Forty Recommendations of the Financial Task Force on Money Laundering regarding the establishment of an FIU, which is to serve "as a national centre for the receiving (and, as permitted, requesting), analysis and dissemination of STR [suspicious transaction reports] and other information regarding potential money-laundering or terrorist financing. The FIU should have access, directly or indirectly, on a timely basis to the financial, administrative and law enforcement information that it requires to properly undertake its functions, including the analysis of STR."(http://www.fatf-gafi.org)
See also the United Nations Convention against Transnational Organized Crime.
See also recommendation 26 of the Forty Recommendations of the Financial Task Force on Money Laundering regarding the establishment of an FIU, which is to serve "as a national centre for the receiving (and, as permitted, requesting), analysis and dissemination of STR [suspicious transaction reports] and other information regarding potential money-laundering or terrorist financing. The FIU should have access, directly or indirectly, on a timely basis to the financial, administrative and law enforcement information that it requires to properly undertake its functions, including the analysis of STR."

[7] So, Article 10 requires States parties to take measures to enhance transparency in their public administration relative to its organization, functioning, decision-making processes and/or other aspects, in accordance with the fundamental principles of their law.

(b) Simplification of administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities;

(c) Publication of information, which may include periodic reports on the risks of corruption in the public administration.

Depending on existing legal arrangements and tradition, new legislation may be required for the above or other measures aiming at transparency in public administration.

Furthermore, effective anti-corruption strategies necessitate the active participation of the general public. Article 13, paragraph 1, requires that States take appropriate measures encouraging the active participation of the public within their means and in accordance with fundamental principles of their law. Individuals and groups, such as civil society, non-governmental organizations and community-based organizations or groups established or located in the country must be encouraged to participate in three areas of anti-corruption efforts:

(a) Prevention of corruption;
(b) The fight against corruption;
(c) Increasing public awareness about the existence, causes, seriousness and threats of corruption.[8]

For the measures dealing with the involvement of civil society and the wider public in anti-corruption efforts, legislation may be required, depending on the existing legal arrangements and tradition. National drafters may wish to review current rules on access to information, privacy issues, restrictions and public order situations to see whether amendments or new legislation are required in order to comply with the Convention.

Optional Requirements: Obligation to Consider

Beyond the mandatory provisions of this section, States parties are required to "*endeavor to establish and promote effective practices aimed at the prevention of corruption*" (Art. 5, para. 2). This is a more general urging or encouragement to develop and introduce measures that can render the preventive policies more effective in the specific context of each State party. For example, the Government of the Netherlands (Ministry of the Interior) is developing guides and models for an integrity policy for lower government, that is, provinces and communities; South Africa's Public Service Anti-Corruption Strategy, Public Service Code of Conduct, Public Finance Management Act, Promotion of Access to Information Act and Financial Disclosure Framework provide for preventive measures that go beyond the requirements of the Convention against Corruption.

Part of the same effort at effective anti-corruption policies is to regularly assess the consequences of existing measures to determine how well they are achieving the desired results. Technological, socio-economic and other circumstances may also change over time and adjustments may be

[8] Measures responsive to this general obligation may include the following:
(a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;
(b) Ensuring that the public has effective access to information;
(c) Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula;
(d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary:
(i) For respect of the rights or reputations of others;
(ii) For the protection of national security or public order or of public health or morals.

necessary. Article 5, paragraph 3, requires States parties to "*endeavor to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption*". This may be accomplished through specialized bodies or academic research, civil society or public sector agencies with oversight responsibilities.

While there is a wide array of international institutions, with varying degrees of delegated authority to internal bureaucracies, many of them share a common denominator -- namely, the relatively high bargaining costs of enacting administrative rules. States that negotiate a treaty establishing an international institution will often have different interests, different domestic constraints, and, as a result, different expectations from the institution and from the functioning of its bureaucracy. This often leads to a legislative impasse, in which the lawmakers cannot overcome the default rules of international law that so far offer only very limited administrative law.

CHALLENGES

SPECIALIZED AUTHORITIES

Article 36 requires States parties, in accordance with the fundamental principles of their legal system:

(a) To ensure they have a body or persons specializing in combating corruption through law enforcement;

(b) To grant the body or persons the necessary independence to carry out its or their functions effectively without undue influence; and

(c) To provide sufficient training and resources to such body or persons.

Article 36 requires that States parties, in accordance with the fundamental principles of their legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement.

States parties may either establish an entirely new independent body or designate an existing body or department within an existing organization. In some cases, an anti-corruption body may be necessary to start combating corruption with fresh and concentrated energy. In other cases, it is often useful to enlarge the competence of an existing body to specifically include anti-corruption. Corruption is often combined with economic offences or organized criminal activities. It is thus a sub-specialization of police, prosecution, judicial and administrative bodies. Implementers are reminded that the creation of new bodies with hyper-specialization may be counterproductive, if it leads to overlapping of competences, a need for additional coordination, etc., that would be hard to resolve.

Such a body or bodies or persons must be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State party, to be able to carry out their functions effectively and without any undue influence and should have the appropriate training and resources to carry out their tasks.

Important in this context is that the domestic law enforcement functions of such a body must be

seen in conjunction with the overall anti-corruption efforts, such as prevention and collaboration at the domestic and international levels.

Moreover, one has to bear in mind that the establishment of the diverse authorities lays within each states authority. Thus some states decide to create and implement a very detailed anti-corruption structure, with clear and well-defined role and competencies, whereas others follow general principles.

THE INTERNATIONAL UNITED NATIONS (UN) ANTI-CORRUPTION TOOLKIT

The response of the international community was to establish a framework in order to facilitate the creation of national anti-corruption authorities. The Toolkit provides, based on the recently adopted UN Convention against Corruption, an inventory of measures for assessing the nature and extent of corruption, for deterring, preventing and combating corruption, and for integrating the information and experience gained into successful national corruption strategies.

Authorities necessary for the combat against anti-corruption

The UNODC[9] is aiming at supporting UN member states in their fight against corruption. Therefore, the UNODC published the so-called

„*The Global Programme Against Corruption - UN Anti Corruption Toolkit*“,

which provides measures how to tackle this set of problems.

The Toolkit is divided into diverse subsections offering approaches[10]:

1. **Assessment of Corruption and Institutional Capabilities against Corruption**

- Assessing the nature and extent of corruption
- Assessment of institutional capacities and responses to corruption

2. Institution Building

- Specialized anti-corruption agencies
- Auditors and audit institutions
- Ombudsmen
- Strengthening judicial institutions
- Civil service reform to strengthen service delivery
- Codes and standards of conduct
- National anti-corruption commissions, committees and similar bodies
- National integrity and action-planning meetings
- Anti-corruption action plans

[9] ECOSOC: Fighting Corruption as a Prerequisite for Good Governance
[10] http://www.unodc.org/unodc/en/corruption/index.html
http://www.unodc.org/pdf/corruption/publications_toolkit_sep04.pdf

- Strengthening local governments

3. **Situational prevention**

- Disclosure of assets and liabilities by public officials
- Authority to monitor public sector contracts
- Curbing corruption in the procurement process
- Integrity pacts
- Results- or fact-based management
- The use of positive incentives to improve employee culture and Motivation

4. **Social prevention**

- Access to information
- Mobilizing civil society through public education and awareness-raising
- Media training and investigative journalism
- Social control mechanisms
- Public complaints mechanisms
- Citizens' charters

5. **Enforcement**

- Guidelines for successful investigations into corruption
- Financial investigations and the monitoring of assets
- Integrity testing
- Electronic surveillance operations

STRENGTHENING LOCAL GOVERNMENTS

Anti-corruption strategies must involve all levels of government, and efforts at each level must be coordinated. Many elements of anti-corruption strategies, though conceived and planned at the national level, must be taken seriously and implemented willingly at the local level to be effective. Other elements must be planned and implemented entirely at the local level.
The purposes of such tools include:

- Assisting planners and policy-makers in adapting tools formulated for general circumstances to meet the needs of action planning and implementation at the local level;

- Facilitating integration of tools used in local communities vertically with national or central programmes and horizontally with programmes of other local communities; and,

- Encouraging and facilitating public participation at the local level,

- Defining clear competences in order to avoid conflict of interest.

The implementation of international treaties at the regional, provincial or municipal levels often poses additional challenges, especially in federal systems, where some elements of ratification may fall within the competence of semi-sovereign sub-national governments and not the State

itself, which has agreed to and is bound by the treaty.[11]As is generally the case with international treaties, the United Nations Convention against Corruption is a legal agreement between sovereign States Parties, leaving matters of implementation within federal countries and at the local or municipal levels to the individual contracting States Parties. However, it was also clear to the drafters of the Convention that many of its provisions, and especially those dealing with the public sector, public officials and public offices, would not be effective unless applied more or less equally to all levels of government within each State Party. This would follow in many countries as a matter of straightforward interpretation and application of many of the provisions.

In some respects, anti-corruption programmes at the municipal or local level can be seen as a miniature version of similar efforts at the national level. Thus, some of the following content does not constitute fully developed "tools" but rather information needed to adapt tools described in other segments to fit the circumstances of locally based efforts. In other aspects, however, corruption represents an exclusively local problem that must be dealt with on that basis or the corruption is of a more widespread nature that requires purely local countermeasures. Some of the following content therefore describes tools or elements of tools specifically developed or tailored to support actions at the local level. In developing countries, decentralization has increased citizen participation in local decision-making. Elected local governments face increasing responsibility for the construction and maintenance of basic infrastructure, delivery of basic services and social services, with the entire concomitant financial, managerial and logistical challenges. That local responsibility has advantages and disadvantages for the control of corruption. Decentralization and greater local autonomy can isolate local activities from centralized monitoring and accountability structures that deter and control corruption. If well managed, however, and provided that they can be mobilized to identify and eliminate corruption, they can also place local activities under closer and more effective scrutiny from local people.

Specific actions can either be adapted as "tools" and incorporated into local anti-corruption programmes or used as a guide to modify elements of programmes being adapted for use at the local level. One way of initiating the local process is through the use of meetings similar to action-planning meetings at the national level. Following preliminary research to identify possible agenda elements and participants, a meeting would be held to inform local stakeholders about the national strategy, to discuss local corruption problems, and identify issues and possible courses of action to be taken. In most cases, a series of meetings would be held to gradually refine the issues, set priorities, establish a plan of action and identify the responsibilities of individuals or organizations to implement the plan. The tools dealing with the organization of meetings and the preparation of action plans will generally be valid for activities undertaken at the local level.

Action planning meetings and the resulting local anti-corruption programmes will generally deal with the following issues:

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[11] A federal system is one in which regions, provinces and other sub-national entities enjoy some degree of sovereignty, usually in the form of exclusive or primary legislative competence over specific subject-matter, within the national constitution. Views about whether sub-national entities have personality or capacity in international law vary to some degree according to the exact structures and relationships established by the domestic constitution involved, but in most cases only treaties ratified or acceded to by the central or federal state entity create international law obligations. Under Article 29 of the Vienna Convention on the Law of Treaties a treaty, once ratified, is binding on the entire territory of a federal State, unless the contrary is specified, usually either in the treaty or a reservation. The principal problem faced by federal States involves persuading the regional or provincial governments to enact and implement legislation giving effect to the treaty within areas of their exclusive legislative competences. See Aust, A., *Modern Treaty*
Law and Practice Cambridge University Press, 2000, at pp.48-52, 160-61, and 169Shaw, M., *International Law*, 4th ed., Cambridge University Press, 1997, pp.155-59.

DECENTRALIZATION

Decentralization is often used as part of an anti-corruption reform programme, but a poorly designed and implemented decentralization programme is likely to lead to more corruption and waste of resources, not less. Among the risks encountered are the decentralization of corruption by increasing the number of corrupt opportunities, political capture of the new local agencies through local elites, a decrease in public service delivery caused by maladministration and insufficient local capabilities, and macro-economic instability caused by red tape and insecurity.

One option for limiting the corruption risks associated with decentralization is the introduction of special anti-corruption provisions, either in national statutes or in laws applying only to local governments.

Legal anti-corruption tools constitute an important means for showing commitment to reform, but their impact is dependent on the capacity of the enforcing institutions and the quality of accompanying legislative measures that work together to prevent or expose corrupt acts. It is thus essential, when deciding on whether an anti-corruption provision should be part of the national legal framework (and hence apply to all local authorities) or be drafted by or for the respective local authorities (and hence reflect local circumstances and needs more accurately), to consider not only the extent of decentralization, but also the capabilities of the implementing institutions.

Independently of whether or not a legal provision is of national or local scale, it must be part of a legal framework that provides a reliable basis for corrupt acts to come to light – like access to information, obligations to inform affected parties prior to decisions being taken, access to meetings, agendas, audit reports, transparency provisions for procurement and tenders, codes of conduct and citizens' charters. There is also a need for provisions that substantially heighten the risk of corrupt transactions – like statutes that outlaw and establish punishments for bribery, nepotism and other forms of corrupt behavior.

Identifying the political will and capacity to execute local reforms.

It is important to identify local leaders with the will and ability to press for better governance in general and anti-corruption measures in particular. Often, local civil society sources, such as the media, can assist in this effort.

The assessment of local corruption, the institutional framework for actions

As most corruption has some local component, those active at the national or international levels must bear in mind that local planning will usually have to be flexible enough for local circumstances for effective implementation to take place. Much assessment, particularly of local institutions and political conditions, can be carried out using action-planning meetings. Other information, such as assessments of the local nature and extent of corruption and general public concern about it, may have to be obtained using more detailed and specific measures, such as public surveys. While assessment should precede the development and implementation of action plans, it should also takes place during and upon completion of the process to assess progress and adjust actions as necessary.

Implementation of the reforms

Based on the consensus of the workshops and the analysis of qualitative and quantitative information, specific reforms can be developed and implemented in ways that address, and are seen to address, factors that may be hampering integrity and service delivery at the local level.

Experience suggests that in an environment of scarce human and financial resources, international institutions may play an important role in supporting municipal implementation through technical assistance. It is also important to develop an appropriate sequence for reforms taking into consideration factors such as direct and indirect economic costs, political costs and benefits, and the need to obtain short-term results to generate longer-term credibility. The objective is to incorporate "best practices" into municipal public anti-corruption policies through civil society operational committees. If appropriately applied, best practices should produce lower levels of corruption and improved service delivery, combined with the accountability generated by effective social controls. They demonstrate the advantages of combining political will, technical capacity to execute reforms, and a partnership with civil society.

Evaluation and monitoring

Efficiency, effectiveness, levels of corruption, accessibility, transparency, procedural complexity and other relevant factors must be reassessed from time to time to determine whether local government services have shown an improvement and whether adjustments to anti-corruption programmes are needed. As with the initial assessment, objective indicators of performance and subjective indicators of the perceptions of the public and key service-users should be considered. In analyzing the indicators, some consideration should be given, not only to the individual factors, but how these are related and what the relationship says about overall impact. Regarding procedural complexity, for example, it is important to consider whether complexity in a particular area has increased or decreased, and also whether overall performance has improved or deteriorated and whether the two are linked. Where complexity is reduced but performance does not improve, further enquiry may be needed to determine whether other factors are impeding progress.

The use of local Anti-corruption Commissions or Committees

The establishment of commissions or committees to develop, implement and monitor anti-corruption efforts. The elements discussed could include the following elements:

- Development of a municipal strategy or action plan combining elements of the national programme with those generated or modified by local needs;

- Translation of national and municipal anti-corruption policies into specific plans of action for the local level;

- Preparation of municipal legislation, where needed;

- Dissemination of information, generation of local support and momentum;

- Monitoring of the implementation of the local programme; and,

- Providing local information and feedback to national, regional, and local anti-corruption entities.

Related Tools

Most public services are delivered at the municipal or local level; thus, that level is where most petty and administrative corruption is likely to occur. For municipal anti-corruption initiatives to succeed, additional initiatives also need to be launched. Specific tools that may form elements of local programmes or be used in conjunction with such programmes include:

- Tools that increase public awareness, such as media campaigns, that increase awareness of and resistance to corruption while fostering awareness and support of anti-corruption efforts;

- Tools supporting consultations and the development of strategies, and action plans that reflect local problems and priorities, such as the holding of action-planning or similar meetings;

- Tools involving assessment of the nature and extent of corruption as well as local perceptions and reactions to the problem and efforts to combat it.

- Tools in this category assist in developing "baseline" information against which later progress can be assessed, ongoing assessments as to whether goals have been achieved and modifications or adjustments to ongoing strategies or actions;

- Tools that develop and establish standards, such as codes of conduct, are often used to provide the basis for efforts at the local level and to generate appropriate expectations from service-users;

- Tools supporting transparency;

- Tools supporting institutional reform, such as the creation of performance linked incentives for officials the reduction of official discretion, and the streamlining or simplification of procedures; and

- Tools supporting accountability, such as inspection or audit requirements, disclosure requirements, complaints mechanisms, conflict of interest measures, disciplinary rules and discretion.

GUARANTEEING TRANSPARENCY IN THE WORK OF THE PUBLIC ADMINSTRATION AS ON THE NATIONAL AND INTERNATIONAL SCALE

Best practices are not yet institutionalized at the level of every day functioning of the administrative state apparatus, judiciary, police or customs. This fact requires the permanent consideration of two simultaneous approaches, both important for the efforts against corruption. The first one regards the building of *normality* by instituting standards and establishing best practices at the level of administration and other key sectors, like education, sanitary system, law enforcement and justice. This approach addresses the whole spectrum of activities regarding the prevention of corruption, creating a society, which praises integrity and functions on the basis of recognized integrity standards. The other approach regards *the suppression of deviant behaviors from these standards and rules* and includes the activities of countering corruption, as well as the completion of the institutional frame to allow an efficient countering of the phenomenon. Finally, the accomplishment of the activities within these two domains requires the enhancement of internal and international cooperation in the field of preventing and countering corruption, thus constituting a third area of activity.

CODES OF CONDUCT AND CONFLICTS OF INTEREST

Generally speaking, a code of ethics sets out in broad terms those high-level values and principles

that define the professional role of the civil service – such as impartiality, legality, integrity, fairness and responsibility. Codes of conduct, on the other hand, usually focus on the application of such principles in practice. They set basic enforceable standards for the day-to-day work of officials, for example in relation to whistle blowing, resolving conflicts of interest, and being accountable for official actions. Codes of ethics and conduct can apply to the entire public sector of a country or sub-national unit, or be tailored to reflect the ethics challenges of specific public agencies only. Codes which support public sector statutes and criminal laws can add to the legal framework.

Some local entities have enacted specific legislation on ethical conduct in the public sector which sets out the framework of ethics obligations within which civil servants operate and demands that they be used as a basis for the elaboration of a code of conduct. Each department's chief executive is obliged to develop and enforce a code of conduct, using the appropriate tools, and to report back to parliament on his or her progress.

Codes, independently of whether they are drafted on the national or local level, should contain conflict of interest regulations that help to identify and to deal with actual, potential and perceived conflicts of interest, such as the employment of friends or family or actions that benefit a public officer's economic or financial interests. Generally speaking, a conflict of interest arises when the private interests of a public official clash or coincide with the public interest and potentially inhibit the official's objectivity in the exercise of his or her tasks and duties, and therefore bear the potential of seriously undermining the functioning of an organization.[12]

The enactment of a code of conduct can help improve the integrity of the diverse authorities on each level and thereby prevent corruption. Again, it is, by itself insufficient as an anti-corruption measure, and needs to be accompanied by a comprehensive training programme for civil servants expected to act under it, by awareness-raising measures to make sure the codes are known by the general public, and maybe even an enforcing body.[13]

INCREASING THE INTEGRITY AND RESISTANCE TO CORRUPTION OF THE FINANCIAL COURTS AND THE COURT OF ACCOUNTS

The integrity of the judiciary is crucial for the success of the anticorruption efforts. At the same time the judiciary was identified as an area whose dysfunctions may have a major impact on the efficiency of the anticorruption fight. The court of Accounts aims on strengthening the independence of the judiciary and more specifically the financial courts towards the politics. Nevertheless, measures are still required to lead to high performance and integrity standards for magistrates and the Public Prosecutor. The adoption and dissemination of the updated deontological code are important measures in view to increase the integrity and resistance to corruption of the judiciary, together with the filling in by the magistrates of the provisions regarding the wealth and interests declarations[14].

For prosecutors, the independent auditing of government activities, monitoring the implementation of the State's Finances Acts and the Social Security financing Acts, the assessment of public

[12] Qualitative examples for codes addressing conflicts of interest include New South Wales's Constitution (Disclosures by Members) Regulation of 1983 and Lithuania's Law on the Adjustment of Public and Private Interests in the Public Service which refers specifically to local officials as well.

[13] For example the Standards Board for England. It is responsible for promoting high ethical standards and investigating allegations that local authority's behavior may have fallen short of the required standards. It was formally established in March 2001, based on provisions of the Local Government Act of 2000.)

[14] The new detailed forms for wealth declarations and declaration of interests were approved by GEO no. 14/3 March 2005

policies, the information of citizens and finally the audition of entities that call on public generosity, underlines the vulnerabilities of the position of the prosecutor in relation with the hierarchically superior prosecutor, identifying the premises of certain systemic problems. The action plan includes clear measures for the application of the continuity principle during the criminal pursuit: establishing objective criteria for the initial assignment of cases to public prosecutors, restricting the possibilities for cases to be reassigned or taken over hierarchically, to situations expressly and exhaustively provided for in the law, introducing the court control on all the acts of invalidation adopted by the hierarchically superior public prosecutors upon request from the public prosecutors who perform the investigations.

In order to increase the efficiency in the activity of criminal pursuit, the effective and direct control of the prosecutor upon the investigation activities made by the judicial police will be consolidated. In the same time, procedures to ensure the prompt notification of the prosecutor involved in organized crime or corruption cases, by the intelligence and investigations structures through the transmission of any information or evidence on committing acts of corruption or organized crime. In this context, the established the Intelligence Community for example could be an advantage in order to coordinate all the structures with competencies in collecting information.

Members who detain administrative positions within the courts and prosecutor's offices should not become incompatible. Furthermore, the establishment of detailed measures, consisting in the introduction of some legal provisions which would provide for incompatibilities between the quality of member of the Superior Council of Magistracy and the management positions at courts of account and the prosecutor's offices. In the same time, the action plan introduces measures on the transparency of the magistrates' evaluation process and with regard to the elaboration and publication by the Superior Council of Magistracy of an annual report on its own activity.

Moreover, a national action plan proposes short-term administrative and legislative measures to reform the Directorate General for Protection and Anticorruption in order for it to be turned into a modern and accountable internal investigation unit at the level of the Ministry of Justice. To this end, the action plan includes measures on redefining the competencies and the elimination of the overlapping, in some countries –like for instance Bulgaria- the demilitarization of the Directorate General for Protection and Anti-Corruption, as well as instituting effective control mechanisms of its activity.

RISKS

REDUCING THE NUMBER OF STRUCTURES THAT HAVE TASKS IN THE FIGHT AGAINST CORRUPTION

An important commitment of diverse states requires the adoption of measures to considerably reduce the number of authorities competent in corruption prevention and investigation, so as to avoid the overlapping of competencies.

The analyses conducted by the Minister of Justice, as well as the external reports, reveal that the anticorruption activity suffers from the overlapping of competencies of different structures, but particularly from fragmentation. The coordination is even more difficult, since this field involves investigation activities and the transfer of confidential data.

The measures within the action plan include:

- Elaborating an analysis to redefine and clearly delimit the tasks of authorities and public institutions that currently hold competences in the field of combating and/or preventing corruption;
- Revising the legislative framework in order to redefine and clearly delimit the competencies, rationalizing the activities and reducing the number of the institutions and authorities in view to limit the present institutional fragmentation.[15]
- Focusing on the interplay between a range of horizontal and vertical institutions of accountability, the need to take a long term and 'holistic' approach to the problem of corruption. For example, the Zambian study addresses *the* major problem of democratic accountability in Zambia: The vast presidential powers that have largely rendered the accountability institutions (checks and balances) meaningless.

STRENGTHENING THE INSTITUTIONAL CAPACITY OF ANTI-CORRUPTION AUTHORITIES

States should ensure the strict application of the anti-corruption legislation in force and the effective independence of the national Anti-corruption authorities. An independent audit on the national Anti-corruption authorities could underline the necessity to reorganize the authority and to allow an effective coordination with the other structures having competencies in fighting corruption, as well as the necessity to improve the human resources policies of national Anti-corruption authorities.

The measures proposed in the action plan could refer to:

- Enhancing the independence and reorganization of the national Anti-corruption authorities;
- Periodical analysis of the its activity in order to guarantee the independence of the authority;
- Establishing clear procedures of collaboration between the national Anti-corruption authorities and all the other anti-corruption structures;
- Recruiting public prosecutors for national Anti-corruption authorities, following their professional performances based on certain objective criteria;
- Ensuring human and financial resources, according to the evaluations;
- Professional specialized training of the personnel;
- Improving the IT segment of the national Anti-corruption authorities as to allow the development of the authorities data base;
- Drawing up and presenting by national Anti-corruption authorities of an annual report on the results on combating high-level corruption.

[15] National Anti-corruption Strategy of the Romanian Government 2005 - 2007 reflects the unconditional political commitment for fighting against corruption. The mission consists to prevent and counter corruption by refining and rigorously implementing the legal framework, through legislative coherence and stability, and by institutional strengthening of the entities with important tasks in the field. The independent audit of the National Anti-corruption Strategy 2001-2004, elaborated in the period January-March 2005 by Freedom House Washington Inc. shows that " *The last four years brought about the development of an impressive arsenal of legal instruments of transparency, accountability and anticorruption in Romania. Some of them seem to have recorded positive effects*". But in the same time, the following major obstacles against an efficient fight against corruption were identified:
The reduced implementation of the anti-corruption legislation; The reduced use of administrative instruments in countering corruption; Insufficient coordination between structures with control and criminal investigation attributions in the field of corruption; The lack of real independence of the prosecutors; The legislative and institutional *inflation* in the field.

INCREASING THE CELERITY OF CRIMINAL PROSECUTION AND CRIMINAL TRIALS

Member state the Convention should ensure that corruption cases are dealt within a swift and transparent manner. Measures that aim to reduce the length of the procedures with regard to all the criminal cases, fully respecting the rights of the indicted and the other parties involved in the criminal case should be taken into account. Furthermore, the revision of the Criminal Procedure Code and the other incidental normative acts could ensure the institutional continuity and the operability of the criminal pursuit of the cases with regard to both corruption and organized crime.

COMBATING CORRUPTION THROUGH ADMINSTRATIVE MEANS

The extension of the definition of the conflicts of interests should also be considered. The designation of a single and independent entity to verify the wealth, conflicts of interests' declarations and the incompatibilities of the diverse actors would represent also a major impact.

COORDINATING AND MONITORING THE IMPLEMENTATION OF THE STRATGY AND OF THE ACTION PLAN

In what concerns the internal cooperation, it is aiming to establishing certain clear proceedings of cooperation between all structures competent in fighting against corruption.

The coordination of the efforts in fighting corruption, the monitoring of the implementation of the national Anti-corruption authorities and the strict application of the anti-corruption legislation, including the sectorial strategies and action plans, could be made by a single inter-institutional authority: for instance a Council for the coordination of the implementation of national Anti-corruption authorities. The Council is created under the authority of the Head of State and in the coordination of the Minister of Justice. The inter-institutional nature and the obligation to invite at the reunions the representatives of the NGOs and journalists will ensure the practical independence of the Council.

FULLY IMPLEMENTING ALL THE ANTI-CORRUPTION INSTRUMENTS OF THE EUROPEAN UNION, THE UNITED NATIONS, THE COUNCIL OF EUROPE AND ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

All States must fully align to the international legislation and best practices. A priority remains the cooperation and coordination, at international and regional level, of the prevention and combating activities within the national Anti-corruption authorities.

LESSONS LEARNED FOR PREVENTIVE MEASURES [16]:

There has to be a strict separation of powers.
There should be a national contact point for preventing and combating corruption with sufficient personnel and autonomy.

[16] How are the Paris Declaration and the Millennium Development Goals Linked to Corruption Prevention and Control?
A Comparison of Compliance Reviews based on the UN Convention against Corruption Indonesia, Colombia, Cameroon and Germany, p. 30 ff.

Investigative agencies and courts should have a special unit or chamber assigned to the national Anti-corruption authority in order to enable effective criminal prosecution.
Legislation is needed to specify how to deal with corrupt public officials.
Supervisory institutions in public procurement and public financial management need strengthening and qualifying to be able to perform their mandate.
Freedom of information acts need to be introduced to enable civil society to participate and thus exercise control.
Reporting and identification obligations for public and private financial institutions and tax authorities facilitate the detection of suspicious transactions.
A corporate criminal law criminalizes systemic corruption in multinational enterprises.

CONCLUSION

Corruption undermines the basic values of societal relations in a democratic and civic society. It threatens the rule of law, trust in public institutions and state authorities, integrity, justice, equal rights, equality and the security of citizens. Corruption enhances and sharpens divisions in society, fosters dishonest attempts to live above one's means and get rich by flouting the values of patient work, thrift and honesty. Corruption stunts the development of free enterprise and political culture, erodes public morals, culture and tradition as fundamental societal values. For all these reasons, corruption must be evaluated from the standpoint of ethics, permanently reflected upon politically and combated by socially responsible efforts. Corruption also reduces public revenues, stimulates unnecessary public expenditure, weakens resistance to organized crime, diminishes the effects of public services, particularly of health care and education. Corruption hinders morality in political decision-making, jeopardizes the stability of and trust in institutions and engenders dissatisfaction among citizens. Suspicion of corruption in itself is very damaging, irrespective of the true extent of corruption, because it brings the credibility of any government into question. The political, economic and general social development of a country depends, *inter alia*, on its capacity to resist the risks stemming from corruption. What is crucial for combating corruption is to create and stimulate the political will and determination of public authorities. By adopting the international standard and implementing them on the national scale, states express their political will and determination to act against corruption. Each of the three wings of Government; the Executive, the Judicature and the Legislature has a significant role to play in the fight against corruption, and all ought to cooperate, albeit without compromising the fundamental independence of any.